



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture adopted Section 3591.19 and subsections (a)(b) and (c) of the regulations in Title 3 of the California Code of Regulations pertaining to *Diaprepes abbreviatus* Eradication Area as an emergency action that was effective on September 28, 2005. The Department proposes to continue the regulation as adopted and to complete the amendment process by submission of a Certificate of Compliance no later than January 26, 2006.

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture also amended Section 3591.19, subsection (a) of the regulations in Title 3 of the California Code of Regulations pertaining to *Diaprepes abbreviatus* Eradication Area as an emergency action that was effective on October 20, 2005. The Department proposes to continue the regulation as adopted and to complete the amendment process by submission of a Certificate of Compliance no later than February 17, 2006.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Notice is also given that any person interested may present statements or arguments in writing relevant to the actions proposed to the agency officer named below on or before January 10, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine

the probability of its spread, and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts, and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

The first action adopted Section 3591.19 and subsections (a),(b) and (c) and established Orange County as the eradication area, the possible carriers and the means and methods that may be used within the eradication area to eradicate or control *Diaprepes abbreviatus*. The effect of this action was to establish authority for the State to conduct eradication activities in Orange County. There is no existing, comparable federal regulation or statute.

The second action amended Section 3591.19, subsection (a), and established Los Angeles County also as an eradication area for *Diaprepes abbreviatus*. The effect of this action was to establish authority for the State to conduct eradication activities in Los Angeles County. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3591.19 does not impose a mandate on local agencies or school districts and no reimbursement is required for Section 3591.19 under Section 17561 of the Government Code. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

**COST IMPACT ON AFFECTED PRIVATE
PERSON OR BUSINESSES**

The agency is not aware of any cost impacts that a representative business or private person would necessarily incur in reasonable compliance with the proposed actions.

ASSESSMENT

The Department has made an assessment that the proposed adoption and amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

AUTHORITY

The Department proposes to adopt Section 3591.19 and subsections (a), (b) and (c); and amend subsection (a), pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes to adopt Section 3591.19 and subsections (a), (b) and (c) ; and amend subsection (a), to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The proposed amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa.pendingregs).

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS**

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

**TITLE 11. COMMISSION ON
PEACE OFFICER STANDARDS
AND TRAINING**

**NOTICE OF PROPOSED
REGULATORY ACTION**

**Obsolete Reimbursement Language in
Regulations 1001, 1015, 1020, and 1021 and
Procedure E-4**

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code § 13503—powers of the Commission on POST, and § 13506—Commission on POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code § 13503 (e)—Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses, § 13523—Commission on POST authority to reimburse for training expenses of full-time regularly paid employees, from cities, counties, or districts.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW—AND THE EFFECT
ON LAW ENFORCEMENT

Since 1988, POST has experimented with presenting training by satellite broadcast. This training delivery method has great potential for significantly reducing travel costs associated with the training of California law enforcement agency personnel. Realization of cost savings, however, was limited by the fact that few law enforcement agencies owned a Steerable C/Ku Band Television Receive Only Satellite Ground Terminal needed to receive the satellite broadcasts. POST also developed interactive videodisc (IVD) courseware that was suitable for presentation of training right at the agency site, making it more convenient and cost effective than the traditional way of presenting this training. But like satellite antennas, IVD systems had been installed at just a few agencies. Therefore, the potential to reduce the costs of travel and time associated with training employees via traditional, off-site classroom methods was limited.

In 1993, the Commission amended Regulation 1015 and adopted Regulations 1020 and 1021. These changes allowed POST Reimbursement Program agency to be reimbursed for the purchase of satellite antenna systems and IVD delivery systems for training full-time regularly paid law enforcement employees. Satellite antenna systems allowed POST monthly “telecourses” to be delivered anywhere in the state via the California POST Television Network (CPTN) broadcast satellite video programs. IVD delivery systems allowed POST agencies to use POST-provided IVD courseware (i.e., Law Enforcement Driver Training, First Aid/CPR) for training.

The Commission’s *satellite broadcast* television network (CPTN) proved to be a success in distributing telecourse training to more than 500 sites statewide on a monthly basis. However, over time, the CPTN satellite system became obsolete as a delivery mechanism for training. The network’s original analog equipment (large dish antenna and receiver/decoder) aged and was no longer reliable for down linking video feeds. The expense of satellite systems, the upkeep of deteriorating systems, the high cost of broadcast airtime, and the high cost to upgrade the existing analog satellite system to a small-dish, digital satellite system proved a fiscal impossibility for POST. This led POST staff to create a new, less expensive method of delivery of needed training utilizing the high quality and compact delivery system presented in the Digital Video Disc (DVD). In July 2003, POST transitioned from its monthly broadcast of telecourses via satellite broadcast to a

DVD-based delivery system, which gave agencies the opportunity to schedule staff training at their convenience rather than attempting to coordinate training with POST broadcast schedules. The replacement of satellite broadcasts with DVDs distributed via automated direct mail has eliminated the need for Regulation 1020 and any references to Regulation 1020.

POST reimbursement for the purchase of multimedia computers allowed many local law enforcement agencies to obtain the technology needed to use high quality interactive CD-ROM training courses. Over time, the multimedia training systems technology also changed. In 1998, the Commission offered reimbursement for the purchase of new computer-based multimedia training systems that would run new CD-ROM courses in development, and other pertinent training courses. Then, during subsequent lean budget years that precluded POST reimbursement for the new systems, agencies transitioned to automation and computers, which are more commonly available for CD-ROM training. While POST agencies can use existing CD-ROM courses for training, new POST-developed training will be delivered via the Internet. With the transition from IVD to CD-ROM to Internet delivery of distance training, it is appropriate to remove Regulation 1021 and any references to Regulation 1021.

At its January 20, 2005 meeting, the Commission approved a proposal to amend Regulation 1015, Reimbursements, and to delete Regulations 1020, Reimbursement for Purchase of Satellite Antenna, and 1021, Reimbursement for Purchase of Interactive Multimedia Training Delivery System to remove references to obsolete regulation language.

TEXT OF PROPOSAL, RULEMAKING FILE,
AND INTERNET ACCESS

The following information regarding the proposed regulatory action is located on the POST website at www.post.ca.gov/RegulationNotices/RegulationNotices.asp:

- POST bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons.

Anyone who does not have Internet access may request a copy of the above documents by calling 916.227.4847 or by submitting a written request to the contact person listed below. Please refer to POST Bulletin 2005-18. The rulemaking file contains the above-mentioned documents and all information considered for this proposal. The Commission will maintain the file for inspection during the Commission’s normal business hours (Monday through Friday, 8 a.m. to 5 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period and will appear on the POST website at the address cited above. To request a copy, call the above phone number, or write to the address under **Contact Persons** in this notice.

PUBLIC COMMENT

The Commission hereby requests written comments related to the proposed actions. *Written comments must be received before 5:00 p.m. on December 26, 2005* and may be directed to Executive Director Kenneth J. O'Brien by fax at 917.228.2801 or by U.S. Mail via Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083.

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8, any interested person or his or her duly authorized representative may request that a public hearing be held. The request must be in writing and received by POST no later than 15 days prior to the close of the public comment period.

CONTACT PERSONS

Please direct any questions about the proposed text, subject matter, or statement of reasons to Patricia Cassidy at 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or via email at Pat.Cassidy@post.ca.gov. The back-up contact person is Paul M. Harman; he may be reached by telephone at 916.227.0539, or via email at Paul.Harman@post.ca.gov.

ESTIMATE OF ECONOMIC IMPACT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-Discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has

found that the proposed amendments will have no affect on California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not impact California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no affect on housing costs.

ASSESSMENT

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the state of California and will not result in the elimination of existing businesses or create or expand businesses in the state of California.

CONSIDERATION OF ALTERNATIVES

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

ADOPTION OF PROPOSED REGULATIONS

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice, or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the clearly indicated text of any modified language will be available, at least 15 days before adoption, to all persons whose comments POST receives during the public comment period and to all persons who request notification from POST of the availability of such changes. Please address a request for the modified text to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text becomes available.

GENERAL PUBLIC INTEREST

BOARD OF BARBERING AND COSMETOLOGY

NOTICE OF REGULATORY HEARING

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology has scheduled a regulatory hearing regarding the Pre-application of Apprentices (Title 16, California Code of Regulations, Section 7337.5). The hearing is scheduled at 9:00 a.m. on December 5, 2005 in Sacramento, CA. at the Department of Social Services, 744 P Street, Office Building 9, Auditorium, Room 102 (canceled hearing dates were October 24, 2005 & October 31, 2005).

Any person who wishes to comment on the proposed regulation may do so by testifying at the hearing or by submitting written comments. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board no later than 5:00 p.m. on or before December 5, 2005.

CONTACT PERSON

PAUL COBB
Staff Analyst
Board of Barbering and Cosmetology
400 R Street, Suite 5100
Sacramento, CA 95814
Telephone: (916) 323-1101
Fax: (916) 445-8893
E-mail Address: Paul_Cobb@dca.ca.gov

BUREAU OF AUTOMOTIVE REPAIR

ERRATA

NOTICE OF PROPOSED ACTION CONCERNING THE OFFICIAL AUTOMOTIVE REPAIR DEALER'S SIGN

By Notice of Proposed Action published September 30, 2005 in the *California Regulatory Notice Register*, Register 2005, No. 39-Z, the Department of Consumer Affairs/Bureau of Automotive Repair announced the scheduling of public hearings to receive comments on the proposed amendment of regulations concerning the official automotive repair dealer's sign. The sections affected are 16 Cal. Code Regs. §§ 3351.3 and 3351.4.

PLEASE BE ADVISED that in the original Notice of Proposed Action the location of the Northern California public hearing scheduled November 18, 2005 is incorrect. The date and time of the hearing are

correct, only the location is different. The corrected hearing information is as follows:

Northern California

November 18, 2005

9:30 a.m.

Contractors State Licensing Board
9821 Business Park Drive
Hearing Room
Sacramento, CA 95827

PLEASE ALSO BE ADVISED that all the other information in the original Notice of Proposed Action, including the date, time and location of the Southern California hearing, is accurate and correct, and remains unchanged.

The complete text of the Notice of Proposed Action, the Initial Statement of Reasons, and the specific language of the proposed regulation amendments are available on the Bureau of Automotive Repair Web site at www.autorepair.ca.gov.

Any questions regarding these corrections should be directed to the contact person named in the original Notice of Proposed Action.

DEPARTMENT OF FISH AND GAME

CESA CONSISTENCY DETERMINATION FOR L2 Fillmore—The Townhouse Project Ventura County

The Department of Fish and Game ("Department") received notice on October 12, 2005 that River Central Investments, LLC, proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of the construction of approximately 55 residences and various infrastructure on 11.4 acres in Ventura County. The activities will result in impacts to 1.8 acres of waters of the U.S., including 0.10 acres of wetlands.

The U.S. Fish and Wildlife Service, on March 31, 2005, issued to the U.S. Army Corps of Engineers (Corps), a no jeopardy federal biological opinion (PAS1726.2067.3266) which considers the Federally and State endangered least Bell's vireo (*Vireo bellii pusillus*), and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, River Central Investments, LLC is requesting a determination that the federal biological opinion PAS1726.2067.3266 is consistent with CESA.

If the Department determines that the federal biological opinion is consistent with CESA, River Central Investments, LLC will not be required to obtain an incidental take permit under CESA (Fish and Game Code Section 2081 (b)) for the proposed project.

DEPARTMENT OF FISH AND GAME

CESA CONSISTENCY DETERMINATION FOR Lockheed Martin Potrero Creek and Laborde Canyon Investigations Riverside County

The Department of Fish and Game ("Department") received notice on October 27, 2005 that the Lockheed Martin Corporation proposes to rely on its 10(a)(1)(B) Incidental Take Permit, issued by the U.S. Fish and Wildlife Service ("Service"), to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of performing various groundwater and soils contaminant investigations on the Potrero Creek and Laborde Canyon properties. The activities will impact approximately 3 acres of habitat known to be occupied by the federally endangered and state threatened Stephens' kangaroo rat (*Dipodomys stephensi*; SKR).

The Service issued Incidental Take Permit No. TE110582-0 on October 14, 2005 for the Potrero Creek and Laborde Canyon Properties Habitat Conservation Plan (HCP). The Incidental Take Permit authorizes incidental take of SKR provided that Lockheed Martin Corporation fully implements the HCP.

Pursuant to California Fish and Game Code Section 2080.1, Lockheed Martin Corporation is requesting a determination that Incidental Take Permit No. TE110582-0 is consistent with CESA.

If the Department determines that the Incidental Take Permit is consistent with CESA, Lockheed Martin Corporation will not be required to obtain an incidental take permit under CESA (Fish and Game Code Section 2081(b)) for the proposed project.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION Fish and Game Code Section 2080.1 CESA No. 2080-2005-025-02

PROJECT: Lower Northwest Interceptor Project
LOCATION: Sacramento and Yolo Counties
NOTIFIER: Sacramento Regional County Sanitation District

BACKGROUND

The proposed Lower Northwest Interceptor project (project) involves the construction of approximately 20 miles of wastewater conveyance infrastructure and associated operations and maintenance support facilities. The main activity associated with construction of the proposed project is the excavation of an open trench large enough to accommodate two 60-inch diameter force mains to carry sewage effluent along

the entire length of the proposed project's alignment. In addition to the installation of the force mains, the proposed project involves the construction of tunnels, gravity lines, manholes, air release valves, blow-off valves, pumping stations, surge tanks, transition structures, valve structures, temporary and permanent access roads, temporary staging areas, power lines, a power substation, and temporary batch plants.

The alignment of the proposed project extends from the existing Natomas Pump station in northwestern Sacramento County to the Sacramento Regional Wastewater Treatment Plant (SRWTP) in southern Sacramento County. Construction of the proposed project will occur in agricultural residential and commercial areas in Sacramento and Yolo counties, as well as in the cities of Sacramento and West Sacramento. The proposed project's alignment will traverse private property, reclamation district easements, the Yolo Shortline Railroad and Union Pacific rights-of-way, and city and county road rights-of-way. The proposed project will also tunnel under several waterways including the Sacramento River (in two separate locations), the Barge Canal, Babel Slough, Morrison Creek, and Laguna Creek. The primary objectives of the proposed project are to: 1) convey the wastewater flow of the Upper Northwest Interceptor to the SRWTP, 2) provide sewer service to the City of West Sacramento, 3) provide relief for the existing Northeast Trunk System, Dry Creek Interceptor, and Arden Pump Station, and 4) provide wastewater flow capacity for future planned growth in the Rio Linda, Natomas, and West Sacramento areas.

Because of the project's potential for take of the giant garter snake (*Thamnophis gigas*) and other federally protected species, on March 16, 2001 the U.S. Army Corps of Engineers consulted with the U.S. Fish and Wildlife Service (Service), as required by the Endangered Species Act ("ESA") (16 U.S.C. § 1531 et seq.). On September 10, 2004 the Service issued Biological Opinion No. 1-1-04-F-0029 for the Lower Northwest Interceptor Project (Corps #200100495) (SCH #2001112085 February 2003 Draft Environmental Impact Report, and SCH #2002092071 May 2003 Final Environmental Impact Report Volume 3 of 3) describing the project actions and setting forth measures to mitigate impacts to giant garter snake (GGS) and its habitat. GGS is also listed as a threatened species under the California Endangered Species Act, Fish and Game Code Sections 2050 et seq. (CESA). On June 10, 2005, in response to a notice from the Sacramento Regional County Sanitation District (SRCSD), the Department of Fish and Game (DFG) issued Consistency Determination No. 2080-2005-013-02, concluding that the project and GGS mitigation described in Biological Opinion No. 1-1-04-F-0029 was consistent with CESA. With

that determination, SRCSD could lawfully proceed with the project pursuant to Fish and Game Code 2080.1 without obtaining CESA take authorization for GGS, provided the project was carried out in a manner consistent with the September 10, 2004 biological opinion.

At the request of SRCSD, the Service subsequently issued two amendments to Biological Opinion No. 1-1-04-F-0029. On July 21, 2005, the Service issued Amendment No. 1-1-05-0198, which made the following changes in the original biological opinion relevant to GGS impacts and mitigation:

- A change in the tunnel alignment under Laguna Creek, resulting in an increase in permanent impacts to GGS habitat of 0.13 acre and temporary impacts to an additional 0.39 acres of temporary impacts.
- A proportional increase in the amount of GGS habitat to be permanently preserved to compensate for the increased impacts.

On September 16, 2005, the Service issued another amendment, No. 1-1-05-F-0253, which made the following additional changes in the biological opinion:

- An extension of the deadline for SRCSD to complete work on the Natomas Force Main's Reclamation District 1000 Tunnel, the Southport Gravity Sewer site restoration and access road work, and the Yolo Force Main site restoration work from October 1, 2005 to October 15, 2005.
- An extension of the deadline for SRCSD to complete work on the Sacramento Force Main's Laguna Creek Tunnel from October 1, 2005 to November 1, 2005.
- A requirement that qualified biologists monitor all work performed after October 1 on a full-time basis.
- An increase of 0.49 acre in GGS habitat to be preserved to compensate for upland impacts from the work between October 1 and November 1, 2005.
- An extension in the deadline for SRCSD to secure and develop 9.11 acres of GGS habitat from September 10, 2005 to October 10, 2005.

On September 30, 2005, DFG received notice from SRCSD pursuant to Fish and Game Code Section 2080.1, requesting a determination that Federal Biological Opinion 1-1-05-0198 as amended on July 1, 2005 and September 16, 2005 was consistent with CESA.

DETERMINATION

Based on the terms and conditions in the Federal Biological Opinion No. 1-1-05-F-0198, as amended, DFG has determined that the biological opinion is consistent with CESA because the project and mitigation measures set forth in the biological opinion meet the conditions set forth in Fish and Game Code

Section 2081(b) and (c) for authorization of incidental take of species protected under CESA. The Department specifically finds that the measures identified in the Biological Opinion will minimize and fully mitigate the project's potential impacts on GGS. These measures include, but are not limited to, the following requirements:

1. SRCSD shall have qualified wildlife biological monitors on the project site full time during construction that occurs from October 1, 2005 through November 1, 2005.
2. SRCSD will protect additional GGS habitat in perpetuity to compensate for the additional impacts caused by revisions in the proposed project and in the work schedule.
3. Except for the extended work season and additional mitigation, all take avoidance and mitigation measures identified in the original biological opinion have been or will be implemented by SRCSD.

Pursuant to Fish and Game Code section 2080.1, with this determination SRCSD will not need incidental take authorization under CESA for take of GGS occurring as a result of the project on or after the date of this determination. Any take that may have occurred after October 1, 2005 and prior to the date of this determination as a result of construction activities in GGS habitat areas is not exempt from CESA's take prohibition because those activities were not considered or included in DFG's prior consistency determination for this project. This consistency determination is valid only so long as SRCSD implements the project as described in the biological opinion, as it was amended on July 21, 2005 and September 16, 2005, and complies with the mitigation measures and other conditions described in the amended biological opinion. If there are any substantive changes to the project, including changes to the mitigation measures, or if the Service amends or replaces the biological opinion, SRCSD will be required to obtain a new consistency determination or a CESA incidental take permit from DFG before undertaking activities that might result in incidental take of GGS.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1

Tracking Number 2080-2005-024-05

PROJECT: Recycled Water Pipeline, Reservoir and Pump Station Project

LOCATION: Cities of San Diego and Chula Vista and an unincorporated portion of the County of San Diego

NOTIFIER: Otay Water District

BACKGROUND

The proposed project would occur in the Cities of San Diego and Chula Vista and unincorporated portions of San Diego County. The project construction footprint will disturb 38.02 acres (5.10 acres permanently, 32.92 acres temporarily), including 0.13 acre of non-native grassland occupied by 673 Otay tarplants (*Deinandra conjugens*) which is listed as endangered under the California Endangered Species Act, Fish and Game Code section 2050, *et seq.* ("CESA") and as threatened under the federal Endangered Species Act. Construction of the proposed project is scheduled to commence on October 1, 2005, although the Applicant will avoid working in areas occupied by Otay tarplants until issuance of this consistency determination. Construction will conclude by January 2007. The proposed project consists of three components, as described below.

1. Installation of a 30-inch pipeline approximately 28,000 feet long extending from Dairy Mart Road in the Tijuana River Valley to a new reservoir. Construction would be limited to the existing development footprint in roads and other public rights-of-way. This pipeline would transport an average of 6 million gallons per day of recycled water from the City of San Diego South Bay Water Reclamation Plant ("SBWRP").
2. Construction of a 12.0-million-gallon recycled water reservoir to be located in the northwest corner of the Otay Valley Landfill property. This reservoir would receive water from the SBWRP via the 30-inch transmission pipeline and primarily function as a regulating reservoir and forebay for the pump station. The reservoir would be accessed via a new 12-foot-wide paved road from Maxwell Road (just south of the Otay Landfill entrance) and an 18-foot-wide perimeter access road encircling the reservoir.
3. Construction of a pump station to be located on the same site as the reservoir. This pump station will transfer recycled water from the reservoir to the existing Olympic Parkway recycled water main via a 24-inch outlet pipeline.

The U.S. Fish and Wildlife Service ("Service") issued a Biological Opinion (FWS-SDG-4253.3) for the proposed project on September 19, 2005. The Biological Opinion describes the project actions and sets forth measures to mitigate impacts to the Otay tarplant. On September 28, 2005, the Director of the Department of Fish and Game ("Department") received a notice from the Otay Water District, seeking a determination pursuant to section 2080.1 of the Fish and Game Code that the Biological Opinion is consistent with CESA.

DETERMINATION

Based upon the terms and conditions in the Biological Opinion, the Department finds that the Biological Opinion is consistent with CESA because the project and the conservation measures meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) for authorization of incidental take of species protected under CESA. These measures include, but are not limited to, the following.

1. The Wildlife Agency-approved Mitigation and Monitoring Plan ("MMP") will be finalized by Otay Water District ("District") within 90 days of the signing of the Biological Opinion. The MMP will address on-site enhancement and/or restoration as well as off-site acquisition and preservation. The Department has received assurances from the District that this mitigation will include: a) place a Wildlife Agency-approved Conservation Easement over the Reservoir Preserve (the off-site mitigation area for the loss of Otay tarplant and its habitat); b) fund in-perpetuity management of the Reservoir Preserve; and c) manage the Reservoir Preserve in perpetuity either by the District or by another entity qualified to do so. If the Reservoir Preserve is deeded to a conservation agency in the future, an endowment sufficient to cover the costs associated with maintenance of the preserve shall be established by the District at that time.
2. As described in the MMP, and summarized in the Biological Opinion, impacts to Otay tarplant will be mitigated as follows:
 - a. Temporary impacts to ten individual Otay tarplant along the pipeline south of the Otay River will be offset at a 4:1 ratio on off-site lands owned by the District.
 - b. Temporary impacts to 358 individual Otay tarplant along the outlet pipeline within the 100 percent Multiple Habitat Planning Area of the City of Chula Vista Multiple Species Conservation Program Subarea Plan will be offset at a 4:1 ratio by restoration of the affected area and five years of monitoring and maintenance.
 - c. Permanent impacts to 305 individual Otay tarplant in the footprint of the reservoir will be offset at a 4:1 ratio on off-site lands owned by the District.

The off-site lands owned by the District referred to in 2a and 2b above are 1.14 acres of non-native grassland land that is not currently preserved, 1.12 acres of which supports 263,000 Otay tarplant individuals (based on 2005 surveys). The MMP requires that 0.42 acre of the potentially suitable and occupied habitat for Otay tarplant must be preserved

- and support at least 2,387 Otay tarplant individuals during one out of the proposed five years of maintenance and monitoring. The mitigation preserve will be monitored and maintained as described in the MMP.
3. Impacts to occupied tarplant habitat will be offset at a 4:1 ratio (on site restoration and/or off site preservation).
 4. Impacts to unoccupied tarplant habitat will be offset at a 1:1 ratio (on site restoration, monitored for 5 years) and/or 4:1 (on site restoration of temporary impacts with no monitoring plus 4:1 preservation off site).
 5. A biological monitor, approved by the Service, will be retained by the applicant or the assigned construction contractor. The biological monitor will review grading plans and construction maps, designate areas that need temporary fencing, and monitor construction. The biological monitor will be on site when construction occurs in, or adjacent to, environmentally sensitive areas, and will have the authority to halt construction to prevent or avoid take of any listed species and/or to ensure compliance with all avoidance and minimization measures.
 6. A pre-construction contractor education meeting will be conducted by the biological monitor prior to beginning construction to ensure that contractors and all construction personnel are fully informed of the biological sensitivities associated with this project. This meeting should focus on 1) the purpose of the protection, 2) contractor identification of sensitive resources in the field (e.g., areas delineated on maps and by fencing or flags), 3) sensitive construction practices, 4) protocol to resolve conflicts that may arise during the construction process, and 5) ramifications of noncompliance. Attendance should be required for all construction personnel. Additional environmental sensitivity briefings will occur as needed during the course of construction to assure that all personnel and contractors coming onto the job have proper training.
 7. The biological monitor will clearly mark on grading plans and construction maps all native vegetation communities or sensitive species that can be avoided. All construction area limits that are adjacent to sensitive biological resources will be delineated by the project biologist with temporary fencing consisting of t-posts with an orange barrier fence. Fencing will be field checked by the project biologist before and during construction.
 8. No equipment fueling will occur adjacent to drainages, tributaries, or wetlands and associated plant communities to preclude water quality impacts. "No fueling zones" will be designated on construction maps and should be situated a minimum distance of 30 meters (90 feet) from all drainages. The project biologist will work with the contractor to determine and establish "no fueling zones." Contractor equipment will be checked for leaks prior to operation near riparian areas in coordination with the project biologist. Any leaks shall be repaired immediately, as necessary. A spill response plan that reduces the risk of a significant spill during a boring accident will be written by the construction contractor and approved prior to construction.
 9. Staging areas will be prohibited within or adjacent to sensitive habitat unless absolutely necessary. Staging areas will be delineated on the grading plans and reviewed by the project biologist. A biologist will be on-site during construction when it occurs adjacent to sensitive habitats. If staging areas are proposed to be placed outside of the study corridor or in previously undisturbed or undeveloped areas, additional field assessments may be required, and additional impacts could occur that could require additional permitting.
 10. All trash associated with construction or other personnel on the site will be properly contained and disposed.
 11. Areas disturbed by construction will be replanted with native vegetation, and best management practices will be implemented where needed for erosion control. An erosion control plan will be required of the construction contractor, including the use of hay bales, straw wattles, silt fences, siltation basins, or other devices necessary to stabilize the soil in denuded or graded areas during the construction and revegetation phases of the project.
- The Department has determined pursuant to Fish and Game Code Section 2080.1 that the above-referenced Biological Opinion is consistent with CESA. Pursuant to Fish and Game Code section 2080.1, no CESA take authorization is necessary for Otay Water District to take Otay tarplant in accordance with the terms and conditions of the Biological Opinion. Any substantive changes to the project as described in the Biological Opinion, including changes to the mitigation measures, will require a new consistency determination or a CESA incidental take permit from the Department.

DEPARTMENT OF HEALTH SERVICES

The Department of Health Services is hereby providing public notice concerning the methodology that will be applied in establishing final Medi-Cal reimbursement to non-contract hospitals for Medi-Cal covered hospital inpatient services provided to Medi-Cal eligible persons during state fiscal year (SFY) 2004/2005 (i.e., July 1, 2004 through June 30, 2005.)

During the 2003/2004 legislative session, the California Legislature enacted Senate Bill (SB) 1103 (Stats. 2004, Ch. 228). Section 32 of SB 1103 contained provisions concerning Medi-Cal reimbursement to non-contract hospitals for inpatient services provided in SFY 2004/2005. Subdivision (c) of section 32 provided for a reduction of 10 percent in the interim rate paid to non-contract hospitals for inpatient services provided during SFY 2004/2005. The Department previously notified providers, in a Medi-Cal provider bulletin and in letters to hospitals, that the Legislature had enacted section 32 and the impact of the statute on interim rates.

The Medi-Cal reimbursement policy for non-contract hospitals is applied to each hospital according to its own fiscal period. Each hospital decides upon its own fiscal period ending (FPE) date and December 31 and June 30 are the most common FPEs. Non-contract hospitals are paid an interim rate during the course of their FPE, which as indicated above, was reduced by 10 percent in SFY 2004/2005 pursuant to section 32, subdivision (c). Hospitals are required to submit a cost report within 5 months of the close of their fiscal period. The Department reviews each hospital's cost report and prepares a tentative settlement, which is a determination of the reimbursement owed the hospital for its fiscal period based on reported costs. Section 32 has no impact on the tentative cost settlement phase. Thus, each hospital's tentative cost settlement for any hospital fiscal period that contains any portion of SFY 2004/2005 will be based on its reported costs for the fiscal period.

Sometime after a tentative cost settlement for a particular hospital's fiscal period, the Department's Financial Audits Branch completes a field audit of the hospital's reported costs. After the Department completes an audit of a hospital's reported costs for its fiscal period, it issues an audit report concerning the hospital's allowable costs in accordance with Medicare standards and principles of cost based reimbursement. Providers may request an administrative hearing to contest the audit findings. (Welf. & Inst. § 14171.)

The final reimbursement payable to a non-contract hospital for inpatient services provided during a hospital's fiscal period is referred to as the peer grouping inpatient reimbursement limitation (PIRL), which is the lesser of the hospital's (1) customary charges, (2) audited allowable costs in accordance with Medicare standards and principles of cost based reimbursement, (3) an all-inclusive rate per discharge limitation (ARPD), or (4) peer grouping rate per discharge limitation (PGRPDL). (Cal. Code Regs., tit. 22, §§ 51545, subd. (a)(70) and 51546.) The Department's Hospital Recoupment Unit (HRU), Rate Development Branch, calculates the ARPD and PGRPDL for a hospital's fiscal period sometime after the Financial Audits Branch issues its audit report as to what the hospital's allowable costs were. The ARPD and PGRPDL are not calculated for rural hospitals and new hospitals.

Section 32, subdivision (b), of SB 1103 modifies the PIRL calculation with respect to non-contract hospital inpatient services provided during SFY 2004/2005. It limits a hospital's allowable costs under the PIRL to the hospital's audited allowable costs per day for its FPE 2003 for services provided during SFY 2004/2005. The Department will apply section 32, subdivision (b) at final settlement for hospital fiscal periods containing any portion of SFY 2004/2005 as follows. For any portion of a hospital's fiscal period that is within SFY 2004/2005, allowable costs for purposes of the PIRL will be based on the lesser of the hospital's audited allowable costs per day for its fiscal period or the hospital's audited allowable costs per day for its FPE 2003. For any portion of a hospital's fiscal period that is not within SFY 2004/2005, allowable costs for purposes of the PIRL will be the audited allowable costs for the fiscal period. Except for hospitals with an FPE June 30, each hospital will have two fiscal periods that include some portion of SFY 2004/2005. Thus, the reimbursement limitation imposed by section 32, subdivision (b) will impact a portion of two different fiscal periods for those hospitals. Section 32, subdivision (b) will only impact FPE June 30, 2005 for hospitals with an FPE June 30. Section 32 will not impact in any way the Department's calculation of a hospital's ARPD or PGRPDL. The Department will not apply section 32, subdivision (b) to any hospital until such time as it issues its audit report for the hospital's fiscal period that contains any portion of SFY 2004/2005. At that time, each hospital will be separately notified of their audited allowable costs for the fiscal period and the impact of section 32, subdivision (b) on final reimbursement in accordance with the above-described methodology.

There will be no public hearing on this matter. Anyone wishing to comment on the impact of section 32 on a non-contract hospital's reimbursement for services provided in SFY 2004/2005 may submit comments in writing no later than December 31, 2005 to:

Gary Wong, Audit Supervisor
Department of Health Services
Audit Review and Analysis Section
P.O. Box 997413—MS 2109
Sacramento, California 95899-7413

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF CONSENT DECREE BKK LANDFILLS FACILITY WEST COVINA, CALIFORNIA

Public Comment Period November 14, 2005
through December 13, 2005

The Department of Toxic Substances Control ("DTSC"), pursuant to the authority vested in DTSC under Section 107 of CERCLA, 42 U.S.C. § 9607 and California Health and Safety Code section 25358.3(e), proposes to finalize a Consent Decree regarding the BKK Landfills Facility located at 2210 South Azusa Avenue, West Covina, California.

On October 31, 2005, DTSC filed a complaint in United States District Court, Central District of California, Docket No. CV05-7746 CAS against a number of defendants under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.* and the California Health and Safety Code section 25358.3 (e). The Consent Decree is intended to resolve the liability of the defendants for: certain DTSC past and future response costs; and for oversight costs that DTSC will incur during the time that the defendants' conduct site activities. The Consent Decree obligates the defendants to conduct certain work at the BKK Landfills Facility for slightly less than two (2) years. The Consent Decree provides covenants not to sue and contribution protection for these costs and work, and provides for standstills and tolling of enforcement activity and litigation among the parties.

DTSC is holding a 30-day comment period on the Consent Decree. Written comments on the proposed Consent Decree must be submitted on or before 5:00 p.m. December 13, 2005. DTSC may modify or withdraw its consent to the Consent Decree if such comments disclose facts or considerations that indicate the proposed Consent Decree is inappropriate, improper or inadequate.

Comments should be addressed to:

Marilee Hanson (mhanson@dtsc.ca.gov)
Department of Toxic Substances Control
Office of Legal Counsel
P.O. Box 806
Sacramento, California 95812-0806

With copy to:

Jim Dragna (jim.dragna@bingham.com)
Bingham McCutchen
355 South Grand Avenue
Los Angeles, California 90071-3106

Any comments sent electronically should also be sent by mail. Comments should refer to the BKK Landfills Facility Consent Decree.

During the public comment period, the Consent Decree may be examined on the DTSC Internet Web site at:

www.dtsc.ca.gov under "Hot Topics."
Scroll down to "Local Projects"
Click on "BKK Corporation Landfill"
Scroll down to "Project Related Documents"
Click on "Consent Decree-2005" and "Consent Decree Exhibits-2005"

The Consent Decree may also be examined at the following location:

DTSC headquarters office at 1001 I Street, Sacramento, California 95812-0806. Please contact Ms. Nancy Aquino at (916) 323-4911 (phone) or (916) 323-5542 (fax) or naquino@dtsc.ca.gov for an appointment.

The Consent Decree may also be examined at the DTSC regional office:

Department of Toxic Substances Control,
1011 North Glenview Avenue
Glendale, California 91201-2205
Please contact Ms. Jone Barrio, Regional Records Coordinator at (818) 551-2886 (phone) or (818) 551-2976 (fax) for an appointment.

A copy of the Consent Decree may also be obtained by mail from the DTSC Office of Legal Counsel at P.O. Box 806, Sacramento, California 95812-0806, or by faxing or e-mailing a request to Nancy Aquino (naquino@dtsc.ca.gov), fax no. (916) 323-5542, phone confirmation number (916) 323-4911. If requesting a copy from DTSC, the cost for reproductions is \$0.15 (15 cents) per page. Please make your check or money order payable to the Department of Toxic Substances Control and mail it to Ms. Aquino in DTSC headquarters at the address shown above.

STATE PERSONNEL BOARD

NOTICE OF MODIFICATIONS OF PROPOSED REGULATIONS AND PUBLIC HEARING

California Code of Regulations
 Title 2. Administration
 Division 1. Administrative Personnel
 Chapter 1. State Personnel Board
 Article 4. Hearings and Appeals

DATE: November 11, 2005
TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR'S CABINET
SUBJECT: TITLE 2, CALIFORNIA CODE OF REGULATIONS §§ 57.1 THROUGH 57.4—DISCOVERY IN EVIDENTIARY HEARINGS REGULATIONS

Under the authority established in Government Code (GC) § 18701, and pursuant to GC § 11346.8(c), the State Personnel Board (SPB) is providing notice of changes that are being considered concerning the above-named regulations, which were the subject of public hearings held in August and October 2005. As a result of written comments and oral testimony received, parts of the regulations have been modified from what was originally made available. Please take notice that a public hearing regarding the modifications to the original proposed regulations made available is scheduled for:

Date and Time: December 6, 2005
 10:00 a.m. to 10:30 a.m.
Place: 455 Golden Gate Avenue,
 Benicia Room
 San Francisco, CA 94102
Purpose: To receive comments about this action.

A copy of the full text of the regulations as originally proposed and the modifications are attached. SPB's rulemaking file on the proposed action is open to public inspection by appointment Monday through Friday, from 8:00 a.m. to 5:00 p.m. at 801 Capitol Mall, Room 555, Sacramento, CA 95814.

WRITTEN PUBLIC COMMENT PERIOD

The written public comment period will close on Monday, November 28, 2005 at 5:00 p.m. Any person may submit written comments about the proposed modifications. To be considered by SPB, written comments must be received by Bruce Monfross at SPB, P.O. Box 944201, Sacramento, CA 94244-2010, before the close of the written comment period. During this comment period, written comments may

also be e-mailed to Bruce Monfross at bmonfross@spb.ca.gov or faxed to (916) 653-4256.

Additional information or questions regarding the substance of the proposed action should be directed to Bruce Monfross at (916) 653-1403. Questions regarding the regulatory process in conjunction with these regulations may be directed to Elizabeth Montoya, the backup contact person, at (916) 654-0842 or TDD (916) 653-1498.

REGULATIONS GOVERNING DISCOVERY IN EVIDENTIARY HEARINGS

Changes to the original text are illustrated in the following manner: regulation language originally proposed is underlined; deletions from the language originally proposed are shown in strikeout using a “-”, *italicized text* with a single underline indicates original proposed changes due to clerical error were inadvertently designated as being deleted instead of added, and additions to the language originally proposed are double underlined and *italicized*.

TITLE 2. Administration
 DIVISION 1. Administrative Personnel
 CHAPTER 1. State Personnel Board
 SUBCHAPTER 1. General Civil
 Service Regulations
 ARTICLE 4. Hearings and Appeals

§ 57.1. Discovery in Evidentiary Hearings Other than Adverse Actions; Exclusive Provisions Before the Board or a Board Administrative Law Judge.

~~The provisions of Section 57.2–57.4 provide the exclusive right to and method of discovery for evidentiary hearings conducted before the Board and/or Board administrative law judges concerning appeals from discrimination (Sections 54 and 54.2); and when a petition for hearing is granted from the Notice of Findings issued in relation to a complaint of whistleblower retaliation (Sections 56–56.8). These provisions shall also apply when discrimination or retaliation is raised as an affirmative defense in an answer or appeal filed with the Board pursuant to the provisions of Section 51.2 concerning Notices of Adverse Action (Government Code Sections 19575 and 19590), Rejections During Probationary Period (Government Code Section 19175), Medical Actions (Government Code Section 19253.5), and Non-Punitive Actions (Government Code Section 19585).~~

(a) An employee who is served with a Notice of Adverse Action pursuant to the provisions of Government Code Sections 19574 or 19590 shall be entitled to conduct discovery in accordance with the provisions of Government Code Sections 19574.1 and 19574.2. In those cases where an employee raises an affirmative defense alleging discrimination or retaliation

when filing an answer to a Notice of Adverse Action pursuant to the provisions of Government Code Sections 19575 or 19590, or in those cases where an employee raises an affirmative defense of retaliation or discrimination during the course of a hearing before the Board or an administrative law judge regarding an appeal from adverse action, the appointing power or any other named respondent shall be entitled to conduct discovery regarding any such affirmative defense in accordance with the provisions of Sections 57.2–57.4.

(b) Any party to any other type of action scheduled for hearing before the Board and/or a Board administrative law judge, including but not limited to, rejections during probationary period (Government Code Section 19173), discrimination complaints (Government Code Section 19702), appeals from denial of reasonable accommodation (Government Code Section 19702), whistleblower retaliation complaints (Education Code Section 87164, Government Code Sections 8547.8 and 19683), appeals from non-punitive action (Government Code Section 19585), appeals from medical action (Government Code Section 19253.5), appeals from Career Executive Assignment termination (Government Code Section 19889.2), and appeals from constructive medical termination, shall be entitled to conduct discovery in accordance with the provisions of Sections 57.2–57.4.

(c) The discovery provisions set forth in Sections 57.2–57.4 shall not apply to those cases scheduled for hearing or review by the Executive Officer or a Board hearing officer, to informal hearings conducted by Board administrative law judges pursuant to Government Code Section 11445.10 *et seq.*, to those cases assigned to hearing before a Board administrative law judge pursuant to the provisions of Section 52(b), to appeals from termination of Limited Term employees pursuant to Section 282, to appeals from termination of a Limited Examination and Appointment Program appointment pursuant to Section 547.57, or to any other appeal or complaint excluded from the formal evidentiary hearing process pursuant to statute or regulation.

(d) The time frames for service of process set forth in Sections 57.2–57.4 shall apply in those circumstances where service is made or attempted by mail, and service shall not be deemed effective on the date of mailing. Instead, service by mail shall be deemed effective only upon such time as the document being served is either actually received by the person or entity being served, or is legally presumed to have been delivered pursuant to the provisions of Code of Civil Procedure Section 1013, whichever date occurs first.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; ~~and~~ Sections 8547.8, 11445.10 *et seq.*, 18670, 18671, 18672, 18672.1, 18673, 18675, 19173, 19175, 19253.5, 19574, 19574.1, 19574.2, 19575, 19585, 19590, 19683, ~~and~~ 19700–19706, and 19889.2, Government Code, and Section 1013, Civil Procedures Code.

§ 57.2. Request for Discovery; Statements; Writings; Investigative Reports; Witness List.

(a) Each party to ~~the an~~ appeal or complaint listed in Section 57.1(a) or (b) and scheduled for a hearing is entitled to serve a request for discovery on any other named party to the complaint or appeal as allowed by subdivisions (c)–(e), and Government Code Section 18673. All requests for discovery shall be ~~made~~ served on the responding party no later than ~~36–40~~ calendar days prior to the initial hearing date, except upon a petition and showing of good cause by the party seeking discovery, and a finding by the administrative law judge, in his or her sole discretion, that such additional or late requests for discovery should be permitted in the furtherance of justice. For purposes of this ~~s~~Section, the term “party” is defined as the person, ~~to include or~~ appointing powers, filing the appeal or complaint, any named respondent, and ~~his or her~~ their designated legal representative, ~~s as well as any person, to include appointing powers, specifically identified in the appeal as a named respondent, and his or her designated legal representative.~~

(b) ~~When an appeal is amended, all parties, other than the amending party, may serve a request for discovery on any other party to the appeal within 5 days of service of the amended appeal. Such requests for discovery shall be limited solely to those additional issues, if any, raised in the amended appeal. The administrative law judge may, in his or her discretion, extend the time period for requesting discovery under this subdivision upon a showing of good cause.~~

(eb) Each party to the appeal or complaint is entitled to request and receive from any other party to the appeal or complaint the names and home or business addresses of percipient witnesses to the event(s) in question, to the extent known to the other party, ~~unless~~ and of individuals who may be called as witnesses during the course of the hearing, except to the extent that disclosure of the address is prohibited by law. Each party to the appeal is also entitled to request and receive from any other party to the appeal the names and addresses of individuals who may be called as witnesses to testify during the course of the hearing. The responding party may, in his or her discretion, provide either the home or business address of the witness, ~~unless~~ except to the extent that disclosure of the address is prohibited by law.

(dc) Each party to the appeal or complaint is entitled to inspect and make a copy of any of the following non-privileged materials in the possession, custody, or control of any other party to the appeal or complaint:

(1) Statements, as that term is defined in Evidence Code Section 225, of witnesses ~~then~~ proposed to be called as witnesses during the hearing by the party and of other persons having personal knowledge of the act, omission, event, decision, condition, or policy which are the basis for the appeal; The responding party shall, upon a showing of good cause and subject to the discretion of the administrative law judge, subsequently amend this list if it intends to call additional witnesses not previously disclosed;

(2) All writings, as that term is defined in Evidence Code Section 250, that the responding party ~~then~~ proposes to enter into evidence; The responding party shall, upon a showing of good cause and subject to the discretion of the administrative law judge, subsequently provide the requesting party with additional writings that it proposes to enter into evidence;

(3) Any other writing or thing that is relevant to the appeal or complaint; and

(4) Investigative reports made by or on behalf of any party to the appeal or complaint pertaining to the subject matter of the proceeding, to the extent that these reports: (A) contain the names and home or business addresses of witnesses or other persons having personal knowledge of the facts, omissions or events which are the basis for the proceeding, unless disclosure of the address is prohibited by law, or (B) reflect matters perceived by the investigator in the course of his or her investigation, or (C) contain or include by attachment any statement or writing described in (A) to (C), inclusive, or summary thereof.

~~(e) For the purpose of this section, in those instances where an audio tape recording is provided, and all or portions of the tape are inaudible due to poor tape quality, the producing party shall, upon the request of the party requesting the discovery, provide a second, more audible, version of the tape recording, if possible. In those instances where a better quality tape recording does not exist, the producing party shall provide a copy of a written transcript of the tape recording, if such transcript exists. The producing party shall not be required to produce a copy of a written transcript for any requested tape recording, if such transcript does not already exist.~~

(fd) All parties receiving a request for discovery shall produce the information requested, or shall serve a written response on the requesting party clearly specifying which of those requested matters will not be produced and the basis for the non-production, within ~~12~~ 15 calendar days of receipt of the discovery request, or shall serve a written response on the

~~requesting party clearly specifying which of those requested matters will not be produced and the basis for the non-production.~~

(e) Not less than 10 calendar days prior to the first scheduled hearing date on the merits, each party shall notify the other parties in writing of the identity and current business address of each expert witness to be presented as a witness at the hearing, and a brief narrative statement of the qualifications of such witnesses and the general substance of the testimony which the expert is expected to provide. At the same time, the parties shall also exchange all written reports prepared by each expert witness. The administrative law judge may permit a party to call an expert witness not included on the list upon a showing of good cause.

~~(g) Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.~~

~~(h) For purposes of this section, service may be accomplished by mailing the request for discovery to the home or business address of the party from whom discovery is sought. Each request for discovery shall have attached a proof of service.~~

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 225 and 250, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

§ 57.3. Petition to Compel Discovery.

~~(a) Any party claiming his or her request for discovery pursuant to Section 57.2 has not been complied with.~~ A party may serve and file with the administrative law judge a petition to compel discovery, naming as responding party the any party who has refused or failed to comply with provide discovery as required by Section 57.2. A copy of the petition shall be served on the responding party on the same date the petition is filed with the administrative law judge. ~~For purposes of this section, service may be effected on the responding party by mailing a copy of the petition to compel discovery, with proof of service attached, to the home or business address of the responding party.~~

(b) The petition shall state facts showing the responding party failed or refused to comply with Section 57.2, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that ~~s~~Section, that a reasonable and good faith attempt to contact the responding party for an informal resolution of the issue has been made, and the grounds of the responding party's refusal, so far as known to the moving party.

(c) The petition shall be served upon the administrative law judge and responding party within 5 days after the responding party refused or failed to comply with the request, or within another time provided by stipulation, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the initial hearing date, except upon petition and determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay commencement of the hearing on the date set, and the possible prejudice of the action to any party.

(d) The responding party shall have a right to file a written answer to the petition. Any answer shall be served on the administrative law judge and the petitioner within 5 days of the service of the petition to compel discovery. For purposes of this section, service may be effected on the petitioner by mailing a copy of the answer, with proof of service attached, to the home or business address of the petitioner.

(e) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(f) Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 5 days of receipt of the responding party's answer to the petition to compel discovery or, if no answer is submitted, within 5 days of the date that such answer was due. Nothing in this section shall preclude the administrative law judge from determining that an evidentiary hearing on the petition shall be conducted prior to the issuance of a decision on the petition. The parties may appear at any such hearing via telephone. The administrative law judge shall decide the petition on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(g) The order granting the petition, in whole or in part, shall be in writing and set forth the matters the moving party is entitled to discover under Section 57.2. The administrative law judge shall serve a copy of the order upon the parties by mail, and/or by facsimile transmission. Where the order grants the motion in whole or in part, the order shall be effective

on the date the order is served, and shall specifically state the date on which production is due. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

(h) The administrative law judge may, upon his or her own motion, or upon the motion of one or more parties to the action and upon a showing of good cause, exercise his or her discretion to continue the initial hearing date in order to resolve any contested discovery issues.

(c) (1) The petition shall be served upon the responding party and filed with the administrative law judge within 14 days after the responding party first evidenced his or her failure or refusal to comply with Section 57.2 or within 30 *calendar* days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15-20 *calendar* days of the date set for commencement of the administrative hearing, except upon a petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay the commencement of the administrative hearing on the date set, and the possible prejudice of the action to any party.

(2) The responding parties shall have a right to file a written answer to the petition. Any answer shall be filed with the administrative law judge and served on the petitioner within 15-10 *calendar* days of service of the petition.

(3) (A) Unless otherwise stipulated by the parties and as provided by this sSection, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 20-15 *calendar* days after the filing of the petition. Nothing in this sSection shall preclude the administrative law judge from determining that an evidentiary hearing *on the underlying matter* shall be conducted prior to the issuance of a decision on the petition. The administrative law judge shall serve a copy of the order upon the parties by mail and/or by facsimile transmission.

(B) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(id) A ruling of the administrative law judge concerning a motion to compel the production of

evidence or to compel the attendance of a witness is subject to review in the same manner and to the same extent as the Board's final decision in the proceeding. Any party aggrieved by the decision of the administrative law judge concerning a motion ~~petition~~ to compel the production of evidence or to compel the attendance of a witness may, within 30 *calendar* days of the service of the decision, file a petition to compel discovery in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. A party applying for judicial relief from the decision of the Board or the administrative law judge concerning any disputed discovery issue shall give notice to the Board and all other parties to the action. The notice may be either oral at the time of the administrative law judge's decision, or written at the same time application is made for judicial relief. ~~The hearing shall be continued pending resolution of any such interlocutory appeal.~~

(e) The administrative law judge may, upon his or her own motion, or upon the motion of one or more parties to the action and upon a showing of good cause, exercise his or her discretion to continue the initial hearing date in order to resolve any contested discovery issues.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Section 915, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

§ 57.4. Petition to Quash or for Protective Order.

(a) Any party claiming that a request for discovery pursuant to Section 57.2 is improper under that Section or is otherwise privileged or exempt ~~for from~~ discovery, may object to its terms by serving and filing with the administrative law judge and the party requesting the disputed discovery, a petition to quash or for a protective order. The petition shall state: (1) a description of the matters sought to be discovered; (2) the reason(s) why the matter is not discoverable under Section 57.2, or is otherwise privileged or exempt from discovery; and (3) that a reasonable and good faith attempt has been made to contact the requesting party and resolve the matter informally.

(b) The petition shall be served upon the administrative law judge and the party requesting discovery within 10 days after the moving party was served with the discovery request, or within another time provided by stipulation, whichever period is longer. No petition may be filed after the applicable time period has expired except upon petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reason(s) for the

~~petition, the diligence or lack of diligence of the petitioning party, whether the granting of the petition will delay commencement of the hearing on the date set, and the possible prejudice of the action to any party. For purposes of this section, service may be effected on the party requesting discovery by mailing a copy of the petition, with proof of service attached, to the home or business address of the party requesting discovery.~~

(c) ~~The party requesting discovery shall have a right to file a written answer to the petition. Any answer shall be served on the administrative law judge and the petitioner within 5 days of the service of the petition to quash and/or for a protective order. For purposes of this section, service may be effected on the petitioner by mailing a copy of the answer, with proof of service attached, to the home or business address of the petitioner.~~

(d) ~~Where the matter sought to be protected is in the possession, custody or control of the moving party, and the moving party asserts that the matter is not a discoverable matter under the provisions of Section 57.2, or is otherwise privileged or exempt from discovery, the administrative law judge may order lodged with him or her matters provided in Section 915(b) of the Evidence Code and examine the matters in accordance with those provisions.~~

(e) ~~Unless otherwise stipulated by the parties, and as provided in this section, the administrative law judge shall review the petition and any response filed by the responding party and issue a decision granting or denying the petition within 5 days of receipt of the responding party's answer to the petition. Nothing in this section shall preclude the administrative law judge from determining that an evidentiary hearing on the petition shall be conducted prior to the issuance of a decision on the petition. The parties may appear at any such hearing via telephone. The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.~~

(f) ~~The order granting the petition, in whole or in part, shall be in writing and set forth the matters the moving party is not required to produce to the party seeking discovery under Section 57.2. The administrative law judge shall serve a copy of the order upon the parties by mail, and/or by facsimile transmission. Where the order grants the motion in whole or in part, the order shall be effective on the date the order is served, and shall specifically state the date on which production, if any, is due. Where the order denies relief to the moving party, the order shall be effective on the date it is served.~~

(b) (1) The petition shall be served upon the party seeking discovery and filed with the administrative

law judge within 10 *calendar* days after the moving party was served with the discovery request, or within another time provided by stipulation, whichever period is longer. No petition may be filed after the applicable time period has expired except upon petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reason(s) for the petition, the diligence or lack of diligence of the petitioning party, whether the granting of the petition will delay commencement of the hearing on the date set, and the possible prejudice of the action to any party.

(2) The party requesting discovery shall have a right to file a written answer to the petition with the administrative law judge and served on the petitioner within 5 *calendar* days of the service of the petition to quash and/or for a protective order.

(3) (A) Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response and issue a decision granting or denying the petition within 20 *calendar* days after the filing of the petition.

(B) The administrative law judge shall have the discretion to continue any evidentiary hearing or to conduct the hearing prior to the issuance of a decision on the petition.

(C) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(gc) A ruling of the administrative law judge concerning a petition to quash or for a protective order is subject to review in the same manner and to the same extent as the Board's final decision in the proceeding. Any party aggrieved by the decision of the administrative law judge concerning a ~~motion~~ petition to quash the production of evidence and/or for a protective order may, within 30 *calendar* days of the service of the decision, file a petition to quash and/or for protective order in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. A party applying for judicial relief from the decision of the Board or the administrative law judge concerning any disputed discovery issue shall give notice to the Board and all other parties to the action. The notice may be either oral at the time of the administrative law judge's decision, or written at the same time application is made for judicial relief.

~~The hearing shall be continued pending resolution of any such interlocutory appeal.~~

~~(h) The administrative law judge may, upon his or her own motion, or upon the motion of one or more parties to the action and upon a showing of good cause, exercise his or her discretion to continue the initial hearing date in order to resolve any contested discovery issues.~~

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Section 915, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700–19706, Government Code.

STATE PERSONNEL BOARD

NOTICE OF MODIFICATIONS OF PROPOSED REGULATIONS AND PUBLIC HEARING

California Code of Regulations

Title 2. Administration

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

Article 4. Hearings and Appeals

DATE: November 11, 2005

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: TITLE 2, CALIFORNIA CODE OF REGULATIONS §§ 56 THROUGH 56.8—WHISTLEBLOWER COMPLAINT PROCEDURES REGULATIONS

Under the authority established in Government Code (GC) § 18701, and pursuant to GC § 11346.8(c), the State Personnel Board (SPB) is providing notice of changes that are being considered concerning the above-named regulations, which were the subject of public hearings held in August and October 2005. As a result of written comments and oral testimony received, parts of the regulations have been modified from what was originally made available. Please take notice that a public hearing regarding the modifications to the original proposed regulations made available is scheduled for:

Date and Time: December 6, 2005

10:00 a.m. to 10:30 a.m.

Place: 455 Golden Gate Avenue,
Benicia Room
San Francisco, CA 94102

Purpose: To receive comments about this action.

A copy of the full text of the regulations as originally proposed and the modifications are at-

tached. SPB's rulemaking file on the proposed action is open to public inspection by appointment Monday through Friday, from 8:00 a.m. to 5:00 p.m. at 801 Capitol Mall, Room 555, Sacramento, CA 95814.

WRITTEN PUBLIC COMMENT PERIOD

The written public comment period will close on Monday, November 28, 2005 at 5:00 p.m. Any person may submit written comments about the proposed modifications. To be considered by SPB, written comments must be received by Bruce Monfross at SPB, P.O. Box 944201, Sacramento, CA 94244-2010, before the close of the written comment period. During this comment period, written comments may also be e-mailed to Bruce Monfross at bmonfross@spb.ca.gov or faxed to (916) 653-4256.

Additional information or questions regarding the substance of the proposed action should be directed to Bruce Monfross at (916) 653-1403. Questions regarding the regulatory process in conjunction with these regulations may be directed to Elizabeth Montoya, the backup contact person, at (916) 654-0842 or TDD (916) 653-1498.

REGULATIONS GOVERNING WHISTLEBLOWER RETALIATION COMPLAINTS

Changes to the original text are illustrated in the following manner: regulation language originally proposed is underlined; deletions from the language originally proposed are shown in strikeout using a "-", and additions to the language originally proposed are double underlined and *italicized*.

TITLE 2. Administration DIVISION 1. Administrative Personnel CHAPTER 1. State Personnel Board SUBCHAPTER 1. General Civil Service Regulations

ARTICLE 4. Hearings and Appeals

§ 56. Whistleblower Retaliation Complaint Process.

(a) Any state employee or applicant for state employment, or any employee or applicant for employment with a California Community College, who believes that he or she has been retaliated against in employment for having reported improper governmental activity, as that phrase is defined in Government Code Section 8547.2(b), or Education Code Section 87162(c), or for having refused to obey an illegal order or directive, as defined in Government Code Section 8547.2(e), or Education Code Section 87162(b), may file a complaint and/or appeal with the Board *State Personnel Board* in accordance with the provisions set forth in Sections 56.1-56.8. For purposes of complaints filed by community college

employees or applicants for community college employment, the local community college district shall be deemed the "appointing power."

(b) For purposes of Sections 56-6.8, the term "Board" is defined as the five-member State Personnel Board, as appointed by the Governor. The term "Executive Officer" is defined as the Executive Officer of the State Personnel Board, as appointed by the Board. The State Personnel Board shall hereinafter be referred to as the SPB.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Sections 87162, 87164, Education Code; and Sections 8547.2, 8547.8, and 19683, Government Code.

§ 56.1. Requirements for Filing Whistleblower Retaliation Complaint with the Appeals Division of the State Personnel Board.

An individual desiring to file a complaint of retaliation with the Board *SPB* must adhere to the following requirements:

(a) Prior to filing his or her complaint with the Board *SPB*, the complainant shall comply with all other filing requirements, if applicable, set forth in Government Code Section 19683.

(b) The complaint shall be filed with *and received by* the ~~Appeals Division-SPB~~ within one year of the most recent alleged act of reprisal. The complaining party shall submit an original complaint and copy of all attachments, and enough copies of the complaint and attachments for the Appeals Division-SPB to serve each entity and person alleged to have engaged in retaliatory conduct and against whom damages and/or disciplinary action is sought.

(c) All complaints shall be in writing.

~~(d) Each complaint shall:~~

~~(1) identify the facts that form the basis of the complaint, including, but not limited to: the improper governmental activity that the complainant reported; or the illegal order or directive the complainant refused to obey; the date the complainant reported the improper governmental activity, or refused to obey the illegal order or directive; the person(s) to whom the complainant reported the improper governmental activity, or to whom the complainant stated that he or she would not obey the illegal order or directive; the improper personnel action, as defined in Government Code Section 8547.3(b), or Education Code Section 87163(b), the complainant experienced as a result of reporting the improper governmental activity, or refusing to obey an illegal order or directive; the date on which the improper employment action occurred; and all information that the complainant possesses that shows that the improper employment action occurred~~

as a result of complainant's report of improper governmental activity, or refusal to obey the illegal order or directive;

(A) For purposes of this section, "improper personnel action" includes, but is not limited to, promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action; as well as intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command the complainant, for the purpose of interfering with the complainant's rights conferred pursuant to applicable statutes.

(2) include as attachments all non-privileged documents, records, declarations and other information in the complainant's possession, custody, or control that are relevant to the complaint of retaliation;

(3) include as an attachment a list of all documents or records relevant to the complaint of retaliation that are not in the complaining party's possession, custody, or control, but which he or she reasonably believes to be in the possession, custody, or control of the appointing power or any individually named respondent to the complaint;

(4) identify all respondents known to the complainant (i.e., the appointing power as well as all state civil service or community college employees alleged to have retaliated against the complainant), and identify the business address of each respondent named as a party to the complaint;

(5) have attached any complaints of retaliation previously filed with the appointing power concerning the same retaliatory acts alleged in the complaint filed with the Board, and a copy of the written response of the appointing power to the complaint, if such response has been provided to the complainant. If the appointing power provides a written response to any such previously filed complaint of retaliation to the complainant after the complaint has been filed with the Appeals Division, the complainant shall file a copy of any response with the Appeals Division within 5 days of receipt of the written response;

(6) specify the relief and/or remedies sought, including any compensatory damages sought;

(7) If adverse action is sought against any individually named respondent, pursuant to the provisions of Government Code Section 19574, the complaint must clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto. If the material facts alleged are not within the personal knowledge of the complainant, the complaining party may be required to present support-

ing affidavits from persons having actual knowledge of the facts before acting upon the request for adverse action. Any failure to comply with the provisions of this section shall constitute a waiver on the part of the complainant to subsequently seek disciplinary action against any individually named respondent;

(8) include a sworn statement, under penalty of perjury, that the contents of the written complaint are true, or believed by the complainant to be true; and

(9) be limited to a maximum of 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed upon a showing of good cause. The complainant shall submit a separate document with the complaint stating the reasons for good cause.

(d) Each complaint shall clearly identify the protected activity engaged in by the complainant, the specific act(s) of reprisal or retaliation alleged to have occurred, and the names and business address of the individual(s) and entities alleged to have committed the retaliatory act(s). Each complaint shall specify the relief and/or remedies sought against each entity or individual, including any compensatory damages sought.

(e) The above procedures do not apply in those cases where an appellant raises retaliation as an affirmative defense when appealing a notice of adverse action, pursuant to Government Code Section 19575, when appealing a notice of rejection during probation, pursuant to Government Code Section 19175, when appealing a notice of medical action, pursuant to Government Code Section 19253.5, or when appealing a notice of non-punitive action, pursuant to Government Code Section 19585.

(e) If adverse action is sought against any individually named respondent, pursuant to the provisions of Government Code Section 19574, the complaint must clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto.

(f) Each complaint shall include a sworn statement, under penalty of perjury, that the contents of the written complaint are true and correct.

(g) Each complaint shall be limited to a maximum of 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed upon a showing of good cause. The complainant shall submit a separate document with the complaint stating the reasons for good cause.

(h) The above procedures do not apply in those cases where an appellant raises retaliation as an affirmative defense when appealing a notice of adverse action, pursuant to Government Code Sections 19575 or 19590, when appealing a notice of rejection during probation, pursuant to Government Code

Section 19175, when appealing a notice of medical action, pursuant to Government Code Section 19253.5, when appealing a notice of non-punitive action, pursuant to Government Code Section 19585, or when appealing a notice of career executive assignment termination pursuant to Government Code Section 19889.2. Neither the remedies nor the relief available to a complaining party pursuant to the provisions of Government Code Sections 8547.8 or 19683, shall, however, be available to a party who raises whistleblower retaliation as either an affirmative defense or as a separate cause of action in any other Board SPB hearing, unless that party has first complied with all filing requirements set forth in Section 56.1.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.3, 8547.8, 18670, 18671, 18675, 19175, 19253.5, 19572, 19583.5, 19585, 19683 and 19889.2; and Section 6129, Penal Code.

§ 56.2. Acceptance of Whistleblower Complaint; Notice; Findings of the Executive Officer.

(a) Within 10 working days of receipt of the complaint, the Appeals Division ~~Board SPB~~ shall initiate an investigation to determine if whether the Board it has jurisdiction over the complaint and to determine if whether the complainant meets the filing requirements set forth in Section 56.1. The Appeals Division ~~Board SPB~~ shall also determine if whether the complainant has complied with all other requirements for filing a retaliation complaint, as set forth in Government Code Sections 8547-8547.12 and 19683 and/or Education Code Sections 87160-87164; and Section 56.1 of these regulations.

(b) If the Appeals Division ~~Board SPB~~ determines that all filing requirements have not been satisfied the complaint does not meet all filing requirements, it shall notify the complaining party in writing that the complaint has not been accepted and the reason(s) for that determination. The complaining party ~~shall~~ may thereafter be permitted to file an amended complaint within ~~15~~ 10 working days of receipt service of the notice of non-acceptance of the complaint.

(c) Within ~~10~~ working days of receipt of the amended complaint, the Appeals Division shall initiate an investigation to determine if the Board has jurisdiction over the amended complaint, and to determine if the amended complaint meets the filing requirements set forth in Section 56.1. For purposes of determining the one year limitation period, the date that the original complaint is filed with the Board shall be deemed the filing date for the amended complaint. If the Appeals Division determines that all filing requirements have not been satisfied, it shall notify the

complaining party in writing that the amended complaint has been rejected and the reason(s) for that determination.

(d) If the Appeals Division accepts the complaint, it shall notify the complaining party in writing that the complaint has been accepted, and shall serve a copy of the complaint or amended complaint on all respondents named in the complaint. Service of the complaint or amended complaint on the appointing power may be accomplished by mailing a copy of the complaint or amended complaint, with a proof of service attached, to the business address of the executive in charge of the Department, Agency, District or Board, and/or to the Legal Office of the appointing power. Service of the complaint or amended complaint on the individually named respondents may be accomplished by mailing a copy of the complaint or amended complaint, with a proof of service attached, to the business address of each individually named respondent.

(e) Within 20 working days after service of notice of acceptance of the complaint, each named respondent shall file with the Appeals Division and serve on all named parties a written response to the complaint. The written response shall include specific and detailed factual information that refutes the complainant's allegations, and shall include all non-privileged documents, records, declarations and other information in the respondent's possession, custody, or control that are relevant to the complaint of retaliation. Each written response shall have attached a Proof of Service. Service of the response may be accomplished by mailing a copy of the reply to both the Appeals Division and the home or business address of the complaining party. Each written response shall be limited to no more than 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed upon a showing of good cause. The respondent shall submit a separate document with the response stating the reasons for good cause. The Appeals Division may grant an extension of time in which to file a written response to the complaint upon a showing of good cause by the requesting party.

(f) If the complainant desires to file a written reply to the written response(s), he or she shall file the reply with the Appeals Division and serve a copy of the reply on all named parties to the complaint within 10 working days after service of the response(s) of the named respondent(s). Service of the reply may be accomplished by mailing a copy of the reply to the Appeals Division and the business address of each named respondent, with proof of service attached. Each written reply shall be limited to no more than 10 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed

upon a showing of good cause. The complainant shall submit a separate document with the reply stating the reasons for good cause. The Appeals Division may grant an extension of time in which to file a written reply to any response received concerning the complaint upon a showing of good cause. The Appeals Division may, in its sole discretion, condition the granting of any such request for an extension of time upon the complainant's agreement to extend the 60 working day requirement for the issuance of a Notice of Findings for a period of time commensurate with the extension of time granted to the complainant to submit his or her written reply.

(g) Upon acceptance of any written responses, the Appeals Division shall continue its investigation, with or without a hearing, pursuant to Government Code Sections 8547-8547.12 and 19683. In conducting the investigation, the Appeals Division may require any party to the complaint to submit whatever other information it deems necessary to investigate the complaint. For purposes of this section, the phrase "party to the complaint" is limited to the complaining party and/or any respondent named in the complaint.

(h) In those instances where any party to the complaint requests, pursuant to this Section, that the appointing power produce records or documents relevant to the complaint, and the appointing power asserts a privilege or exemption as to the records or documents requested, the following procedure shall apply:

(1) Within 5 working days of the appointing power invoking a privilege or exemption concerning the requested records or documents, either the requesting party or the appointing power may submit a request for review of the issue in writing to the State Personnel Board Chief Administrative Law Judge for resolution. The party submitting the matter to the Chief Administrative Law Judge shall, on that same day, notify the non-moving party, both telephonically and in writing, that the matter has been submitted for review by the Chief Administrative Law Judge;

(2) The requesting party and the appointing power and/or other named respondent shall submit written briefs to the Chief Administrative Law Judge, concerning the disputed documents, and indicating why the disputed documents should or should not be produced. Any such brief shall be filed within 5 working days of the date that notice of the dispute is first submitted to the Chief Administrative Law Judge;

(3) Except as set forth in subsection (4) of this subdivision, when submitting its brief concerning the disputed records or documents, the appointing power shall include a copy of the disputed records or documents for purposes of an in camera review by the Chief Administrative Law Judge, or his or her designee;

(4) In those cases where the appointing power and/or other named respondent declines to produce the requested documents for purposes of an in camera review on the grounds that such disclosure is not required by law, the appointing power shall cite the specific legal authority that renders the disclosure improper;

(5) The Chief Administrative Law Judge, or his or her designee, shall issue his or her decision concerning the disputed documents within 5 working days of receipt of the parties written briefs;

(6) If any party to the dispute disagrees with the decision of the Chief Administrative Law Judge, or his or her designee, they may file a petition for writ of mandate in the superior court, seeking an interlocutory review of that decision;

(7) The 60 working day period for the issuance of the Notice of Findings by the Executive Officer shall be tolled pending the resolution of any such dispute concerning the requested documents.

(i) Within 60 working days of service of the Board's notice of acceptance of the complaint, the Executive Officer shall issue and serve on complainant and each named respondent a Notice of Findings concerning the complaint of retaliation, unless the 60 working day period has been waived or tolled under subsection (f) or (h) of this section.

(j) In those cases where the Executive Officer concludes that the complainant failed to prove the allegations of retaliation by a preponderance of the evidence, the Notice of Findings shall, except in those instances where the findings address jurisdictional and/or procedural matters, specifically address each allegation contained within the complaint.

(k) In those cases where the Executive Officer concludes that the complainant proved one or more of the allegations of retaliation by a preponderance of the evidence, the Notice of Findings shall identify the allegations deemed substantiated, and the named respondents deemed to have engaged in retaliatory acts toward the complainant. The Notice of Findings shall also, except in those instances where the findings address jurisdictional and/or procedural matters, specifically refer to the information offered both in support of, and in opposition to, each allegation contained within the complaint. If it is determined that any individual manager, supervisor, or other state civil service employee engaged in improper retaliatory acts, the Notice of Findings and the appropriate disciplinary action to be taken against any individual found to have engaged in retaliatory conduct.

(l) In those cases where the Executive Officer concludes that material questions of fact exist concerning whether the complainant established retaliation for having engaged in whistleblowing activities, the Executive Officer may, in his or her sole discretion,

assign the case to an evidentiary hearing before a Board Administrative Law Judge.

(m) The Notice of Findings shall inform each named party of his or her respective right to file a Petition for Hearing Before the Board, pursuant to the provisions of Section 56.3 and/or 56.4. However, in those cases where the Executive Officer issues a Notice of Findings assigning the matter to an evidentiary hearing pursuant to the provisions of subdivision (l), no party to the complaint shall be entitled to file either a Petition for Hearing before the Board, nor a Petition for Order of Remedies.

(c) Unless time is extended by the complaining party in writing, the Executive Officer shall, within 10 working days of receipt of the complaint or amended complaint, notify the complaining party of a decision to either:

(1) dismiss the complaint for failure to meet jurisdictional or filing requirements; or

(2) refer the case for investigation and/or an investigative hearing in accordance with the provisions of Section 56.3; or

(3) schedule the case for an informal hearing before an administrative law judge, in accordance with the provisions of Section 56.34.

(d) In accordance with the provisions of Penal Code Section 6129, the SPB shall be entitled to defer review of a complaint filed by an employee of the Department of Corrections and Rehabilitation in those cases where the employee has filed a similar complaint with the Office of the Inspector General.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Sections 87160-87164, Education Code; Sections 8547-8547.2, 8547.8, 18670, 18671, 18675, 19572, 19574, 19575, 19683 and 19590, Government Code; and Section 6129, Penal Code.

§ 56.3. Petition for Hearing by Complainant Before the Board. Cases Referred to Investigation or Investigative Hearing.

(a) If the Notice of Findings concludes no retaliation occurred, the complainant may file a Petition for Hearing before the Board.

(b) A Petition for Hearing under this section must be filed with the Executive Officer and served on each named respondent(s) to the complaint within 30 days of service of the Notice of Findings. The Petition for Hearing must include a copy of the Notice of Findings. Service may be accomplished by mailing a copy of the Petition for Hearing, with a proof of service attached, to the business address of each named party to the complaint.

(c) Each Petition for Hearing shall be in writing and identify the facts that form the basis for the request, but shall be limited to those allegations, issues,

defenses, or requests for relief raised in the written pleadings filed during the Notice of Findings process. Any allegation, issue, defense, or request for relief not raised in the written pleadings during the Notice of Findings process shall be deemed waived, except upon petition and determination by the Board of good cause.

(d) Each respondent named in the complaint shall be permitted an opportunity to submit a written opposition to the Petition for Hearing. Any written opposition to the Petition for Hearing shall be filed with the Board and served on the complainant no later than 20 days after the date the Petition for Hearing was served on the respondent.

(e) In reviewing any such Petition for Hearing, the Board shall determine whether the Notice of Findings conforms to the requirements of Section 56.3(c), and whether the Notice of Findings is supported by substantial evidence.

(f) If the Petition for Hearing is denied, the Board shall issue a Decision that adopts the findings of the Executive Officer as its own decision in the matter.

(g) If the Petition for Hearing is granted by the Board, the Board shall issue a resolution rejecting the findings of the Executive Officer and assign the matter to an administrative law judge, who shall conduct an evidentiary hearing in accordance with those statutes and regulations governing the conduct of Board evidentiary hearings, and issue a Proposed Decision for the Board's review and consideration.

(h) The evidentiary hearing shall be based solely on those allegations, issues, defenses, and requests for relief raised by the parties in the written pleadings during the Notice of Findings process, except in those cases where the Board has determined, pursuant to subdivision (c) of this section, that good cause exists to permit the moving party to amend the pleadings. Any document submitted by any party as an attachment or exhibit to the written pleadings during the Notice of Findings process shall not be considered by the administrative law judge during the evidentiary hearing, unless each document is first introduced and deemed to be relevant and admissible evidence by the administrative law judge during the course of the evidentiary hearing. Each named respondent shall have the right to be represented by a legal representative of his or her own choosing during the hearing, and to present a defense to the allegations contained in the complaint, separate and apart from the defense presented by any other named respondent.

(i) The Board may, in its sole discretion, adopt, reject, or modify the Proposed Decision. If the Board rejects the Proposed Decision, the parties shall be afforded an opportunity to present written and/or oral argument to the Board at a date, time and location designated by the Board, after which time the Board shall issue its own decision concerning the matter.

(a) If the Executive Officer assigns a complaint for investigation or an investigative hearing, the Executive Officer or the assigned investigator(s) shall conduct the investigation and/or investigative hearing in the manner and to the degree they deem appropriate, and shall have full authority to question witnesses, inspect documents, and visit state facilities in furtherance of their investigations. All state agencies and employees shall cooperate fully with the investigators, or be subject to disciplinary action for impeding the investigation. The investigators, pursuant to the provisions of Government Code Section 18671, shall have authority to take depositions, issue subpoenas, order the production of documents, and take any other action administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure, in order to ensure a fair and expeditious investigation and/or investigative hearing. The 60 working day period governing the issuance of the Notice of Findings set forth in Section 56.5(a) shall be tolled for any period of non-compliance by any party to the investigation or investigative hearing.

(b) The Executive Officer shall issue findings regarding the allegations contained in the complaint and a recommended remedy, if any, based on the investigation or investigative hearing, in accordance with the provisions of Section 56.5.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 19582, 19583.5 and 19683, Government Code; and Section 6129, Penal Code, and Section 2016 et seq., Civil Procedure Code.

§ 56.4. Petition for Hearing by Respondents Before the Board. Cases Referred to Informal Hearing Before an ALJ.

(a) Any named respondent found in the Notice of Findings to have engaged in retaliatory conduct may file a Petition for Hearing before the Board, contesting the findings of fact and conclusions regarding the legal causes for discipline and/or the penalty to be imposed.

(b) A Petition for Hearing must be filed with the Executive Officer and served on each named party to the initial complaint within 30 days of service of the Notice of Findings. The Petition for Hearing must include a copy of the Notice of Findings. Service may be accomplished by mailing a copy of the Petition for Hearing, with proof of service attached, to the home or business address of each named party to the complaint.

(c) Each Petition for Hearing shall be in writing and identify the facts that form the basis for the request, but shall be limited to those allegations, issues, defenses, or requests for relief raised in the written pleadings filed during the Notice of Findings process. Any allegation, issue, defense, or request for relief not raised in the written pleadings during the Notice of Findings process shall be deemed waived, except upon petition and determination by the Board of good cause.

(d) The complainant shall be permitted an opportunity to submit a written opposition to the Petition for Hearing. Any written opposition to the Petition for Hearing shall be filed with the Board no later than 20 days after the date the Petition for Hearing was served on the complainant.

(e) In reviewing any such Petition for Hearing, the Board shall determine whether the Notice of Findings conforms to the requirements of Section 56.4(c), and whether the Notice of Findings is supported by substantial evidence.

(f) If the Petition for Hearing is denied, the Board shall issue a Decision that adopts the findings of the Executive Officer as its own decision in the matter.

(g) If the Petition for Hearing is granted by the Board, the Board shall issue a resolution assigning the matter to an administrative law judge, who shall conduct an evidentiary hearing in accordance with those statutes and regulations governing the conduct of Board evidentiary hearings, and issue a Proposed Decision for the Board's review and consideration.

(h) The evidentiary hearing shall be based solely on those allegations, issues, defenses, and requests for relief raised by the parties in the written pleadings during the Notice of Findings process, except in those cases where the Board has determined, pursuant to subdivision (c) of this section, that good cause exists to permit the moving party to amend the pleadings. Any document submitted by any party as part of the written pleadings during the Notice of Findings process shall not be considered by the administrative law judge during the evidentiary hearing, unless each document is first introduced and deemed to be relevant and admissible evidence by the administrative law judge during the course of the evidentiary hearing. Each named respondent shall have the right to be represented by a legal representative of his or her own choosing during the hearing, and to present a defense to the allegations contained in the complaint, separate and apart from the defense presented by any other named respondent.

(i) The Board may, in its sole discretion, adopt, reject, or modify the Proposed Decision. If the Board rejects the Proposed Decision, the parties shall be afforded an opportunity to present written and/or oral argument to the Board at a date, time and location

designated by the Board, after which time the Board shall issue its own decision concerning the matter.

(j) Any Decision issued by the Board in accordance with this section shall be deemed a final decision of the Board, and the individual against whom any disciplinary action is taken as a result of that Decision shall not have any right of further appeal to the Board concerning that action, with the exception of a Petition for Rehearing.

(a) For those complaints assigned to an informal hearing before an administrative law judge, the Board *SPB* shall serve notice of the informal hearing on all parties to the complaint a minimum of 30 *calendar* days prior to the scheduled hearing date. Service on each respondent shall be made at the respondent's business address. The notice shall:

(1) include a complete copy of the complaint with all attachments, and a copy of the statutes and rules governing the informal hearing; and

(2) require each named respondent to serve on the complainant and file with the Board-*SPB*, at least 10 *calendar* days prior to the informal hearing, a written response to the complaint, signed under penalty of perjury, specifically addressing the allegations contained in the complaint.

(b) The informal hearing shall be conducted in conformance with those procedures set forth in Government Code Section 11445.10 *et seq.*, and may in the discretion of the administrative law judge, include such supplemental proceedings, ~~informal or formal~~, as ordered by the administrative law judge, *and as permitted by Section 11445.10 et seq.*, to ensure that the case is heard in a fair and expeditious manner. The administrative law judge shall have full authority to question witnesses, inspect documents, visit state facilities in furtherance of the hearing, and otherwise conduct the hearing in the manner and to the degree he or she deems appropriate. The informal hearing and any supplemental proceedings shall be recorded by the administrative law judge. *All parties shall, upon request and payment of applicable reproduction costs, be provided with a transcript or a copy of the recording of the informal hearing.*

(c) Following the informal hearing and any supplemental proceedings, the administrative law judge shall issue findings for consideration by the Executive Officer regarding the allegations contained in the complaint, together with all recommended relief, if any, proposed to remedy any retaliatory conduct.

(d) The Executive Officer shall have the discretion to adopt the administrative law judge's findings and recommended remedies in their entirety; modify the administrative law judge's findings and recommended remedies; or reject the administrative law judge's findings and recommended remedies, and:

(1) issue independent findings after reviewing the complete record; or

(2) remand the case back to the administrative law judge for further proceedings.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 11445.10 *et seq.*, 11513, 18670, 18671, 18672, 18675, 19572, 19574, 19575, 19582, 19590, 19592 and 19683, Government Code; and Section 6129, and Penal Code.

§ 56.5. ~~Decision Adopting the Notice of Findings.~~ Findings of the Executive Officer.

If no Petition for Hearing is received pursuant to the provisions of Section 56.3 or 56.4, the Notice of Findings shall be deemed to be the Board's final Decision in the matter, and no named party to the action shall be deemed to have any right of further appeal to the Board.

(a) The Executive Officer shall issue a Notice of Findings within 60 working days of the date the Board *SPB* accepts the complaint *pursuant to Section 56.2(c)*, unless the complaining party agrees, in writing, to extend the period for issuing the findings, or unless the time period is otherwise tolled or waived.

(b) In those cases where the Executive Officer concludes that the allegations of retaliation were not proven by a preponderance of the evidence, the Executive Officer shall issue a Notice of Findings dismissing the complaint. The Notice of Findings shall notify the complainant that his or her administrative remedies have been exhausted and that the complainant is free to *may* file a civil complaint with the superior court pursuant to Government Code Section 8547.8(c).

(c) In those cases where the Executive Officer concludes that the complainant proved one or more of the allegations of retaliation by a preponderance of the evidence, the Notice of Findings shall identify the allegations deemed substantiated, and the named respondents deemed to have engaged in retaliatory acts toward the complainant. If the Notice of Findings concludes that any individual manager, supervisor, or other employee engaged in improper retaliatory acts, the Notice of Findings shall include the legal causes for disciplinary action under Government Code Section 19572 and the appropriate disciplinary action to be taken against any individual found to have engaged in retaliatory conduct.

(d) The Notice of Findings shall inform any respondent found to have engaged in retaliatory acts of his or her right to request a hearing regarding the Notice of Findings. Any such request shall be filed with the Board-*SPB*, and served on all other parties within 30 *calendar* days of the issuance of the Notice of Findings. Upon receipt of a timely request for

hearing, the Board shall, at its discretion, schedule a hearing before the ~~five-member~~ Board, or an evidentiary hearing before an administrative law judge, regarding the findings of the Executive Officer. The hearing shall be conducted in accordance with the SPB's rules governing the conduct of evidentiary hearings. If a timely request for hearing is not filed with the Board-SPB, the Notice of Findings shall be deemed the Board's final decision in the case.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671.1, 18675, 19572, 19574, 19575, ~~and~~ 19582, 19590 and 19683, Government Code; and Section 6129, Penal Code.

§ 56.6. Disciplinary Action for Proven Retaliatory Acts.

(a) In those cases where the Board issues a final ~~Decision~~ that finds that ~~any~~ a manager, supervisor, or other state civil service employee has engaged in improper retaliatory acts, the Board shall ~~Order~~ the appointing authority to place a copy of the Board's ~~Decision~~ in that individual's Official Personnel File. ~~The Decision shall set forth the legal causes for discipline under Section 19572, and a statement of the penalty imposed on the individual. The appointing authority shall place the Decision in the individual's Official Personnel File within 30 calendar days of the issuance of the Board's Order and shall to also, within that same time period, notify the Office of the State Controller of the disciplinary action taken against the individual. The appointing authority shall also, within 40 calendar days of the issuance of the Board's Order, notify the Board that it has complied with the provisions of this subdivision.~~

(1) In accordance with the provisions of Penal Code Section 6129, subsection (c)(3), any employee of the Department of Corrections and Rehabilitation found to have engaged in retaliatory acts shall be disciplined by, at a minimum, a suspension without pay for 30 calendar days, unless the Board determines that a lesser penalty is warranted. In those instances where the Board determines that a lesser penalty is warranted, the decision shall specify the reasons for that determination.

(b) In those cases where the Board issues a final ~~Decision~~ that finds that any community college administrator, supervisor, or public school employer, has engaged in improper retaliatory acts, the Board shall ~~Order~~ the appointing authority to place a copy of the Board's ~~Decision~~ in that individual's ~~Official Personnel record~~ File. ~~The appointing authority shall place the Decision in the individual's Official Personnel File within 30 calendar days of the issuance of the Board's Order and shall to also, within 40 calendar~~

days of the issuance of the Board's ~~Order~~, notify the Board that it has complied with the provisions of this subdivision.

(c) Any ~~Decision~~, as described in subdivision (a) or (b), shall be deemed a final decision of the Board and the individual against whom the disciplinary action was taken shall not have any further right of appeal to the Board concerning that action, with the exception of a Petition for Rehearing.

(d) For purposes of this Section, the Board's decision is deemed to be final after:

(1) a request for hearing pursuant to Section 56.5(cd) has not been timely filed with the Board; or

(2) 30 calendar days has elapsed from the date that the ~~five-member~~ Board has issued a decision adopting or modifying the proposed decision submitted by an administrative law judge after an evidentiary hearing and a Petition for Rehearing concerning that decision has not been filed with the Board; or

(3) a decision has been issued by the ~~five-member~~ Board after a hearing before that body and no Petition for Rehearing concerning that decision has been filed with the Board.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 18710, 19572, 19574, 19582, 19583.5, 19590, 19592, and 19683, Government Code; and Section 6129, Penal Code.

§ 56.7. Consolidation with Other Hearings.

(a) The SPB or the assigned administrative law judge shall possess the requisite discretion to direct that separate, reasonably related cases be consolidated into a single hearing. Whenever two or more cases are consolidated, the assigned administrative law judge shall permit the parties a reasonable opportunity to conduct discovery prior to the first scheduled hearing date, if the discovery provisions set forth in Section 57 et seq. are negatively impacted by the consolidation.

(b) In those cases where one or more individually named respondents have been joined in the consolidated hearing, the administrative law judge may, in his or her discretion, make such orders as may appear just in order to prevent any named respondent from being embarrassed, delayed, or put to undue expense, and may order separate hearings or make such other order as the interests of justice may require.

(~~ac~~) In those cases where an appeal from adverse action, rejection during probationary period, medical action, or non-punitive action is consolidated with a whistleblower retaliation complaint, and the whistleblower retaliation complaint identifies specifically named individuals against whom ~~damages or~~ adverse action is sought pursuant to the provisions of Section

56.1(d)(7)(d) and (e), each individually named respondent shall have the right to participate in the consolidated hearing in such a manner as to reasonably defend him or herself against the allegations contained in the whistleblower retaliation complaint. These rights shall include, but not be limited to:

(1) to be represented by a representative of his or her own choosing during the consolidated hearing;

(2) to present a defense on his or her own behalf concerning the allegations and issues raised in the whistleblower retaliation complaint, separate and apart from any defense presented by the appointing power or any other named respondent;

(3) to conduct pre-hearing discovery concerning allegations and issues raised in the whistleblower retaliation complaint;

(4) to examine and cross examine witnesses concerning allegations and issues raised in the whistleblower retaliation complaint;

(5) to introduce and challenge the introduction of evidence concerning allegations and issues raised in the whistleblower retaliation complaint; and

(6) to present oral and/or written argument to the decision-maker concerning allegations and issues raised in the whistleblower retaliation complaint.

(b) In those cases where one or more individually named respondents have been joined in the consolidated hearing, the administrative law judge may, in his or her discretion, make such orders as may appear just in order to prevent any named respondent from being embarrassed, delayed, or put to undue expense, and may order separate hearings or make such other order as the interests of justice may require.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Sections 8547.8, 11513, 18670, 18671, 18672, 18675, 19175, 19253.5, 19575, 19582, 19585, 19590 and 19683, Government Code.

§ 56.8. Discovery. Evidentiary Hearing Procedures and Representation by the Executive Officer.

The discovery provisions set forth in Section 57-57.4 shall apply to this section.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18671, 18672, 18672.1, 18673, 18675 and 19683, Government Code.

(a) The hearing conducted pursuant to Section 56.5(d), shall be conducted in accordance with the Board's *SPB's* rules of practice and procedure for the conduct of hearings before the five-member Board, or evidentiary hearings before an administrative law judge. Any proposed decision issued by an administrative law judge after an evidentiary hearing shall be subject to review by the five-member Board.

(b) The administrative law judge assigned to conduct the evidentiary hearing shall not be the same administrative law judge who conducted the informal investigative hearing in the case, unless all parties to the action request, in writing, that the same administrative law judge be assigned to conduct the evidentiary hearing.

(c) The discovery procedures set forth in Section 57 *et seq.*, shall be applicable to those evidentiary hearings conducted pursuant to this Section.

(d) The Executive Officer, or his or her designee, shall have the authority, in his or her discretion, to prosecute the complaint *and present evidence regarding his or her findings* during a hearing before the five-member Board, and/or during an evidentiary hearing before an administrative law judge. The Executive Officer, or his or her designee, shall have the discretion to present the case in the manner he or she deems to be appropriate, including, but not limited to, the issues to be presented, the evidence to be presented, and the witnesses, if any, to be questioned.

(1) The complaining party shall be permitted to also be represented by a representative of his or her own choosing during any hearing before either the five-member Board, and/or an administrative law judge, and shall be permitted to raise *relevant* issues, present *relevant* evidence, and question witnesses *regarding relevant matters* during those hearings where witness testimony is permitted.

(2) In those cases where the Executive Officer, or his or her designee prosecutes a case during an evidentiary hearing before an administrative law judge, the case shall be assigned to an administrative law judge from the Office of Administrative Hearings.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 19572, 19574, 19575, 19683 and 19590, Government Code; and Section 6129, Penal Code.

RULEMAKING PETITION DECISIONS

DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF DECISION ON PETITION TO REPEAL REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections

PETITIONER

George W. Vetter

AUTHORITY

The authority granted by Government Code (GC) Section 12838.5 vests to the California Department of Corrections and Rehabilitation (CDCR) all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished Youth and Adult Correctional Agency, California Department of Corrections (CDC), Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and the State Commission on Juvenile Justice, Crime and Delinquency Prevention. Penal Code (PC) Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections refers to the Secretary of the CDCR. PC Section 5054 vests with the Secretary of the CDCR, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein. PC Section 5055 provides that commencing July 1, 2005, all powers/duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. PC Section 5058 provides that the Director may prescribe and amend regulations for the administration of prisons.

CONTACT PERSON

Please direct any inquiries regarding this action to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001.

AVAILABILITY OF PETITION

The petition to repeal regulations is available upon request directed to the Department's contact person.

SUMMARY OF PETITION

Petitioner demands that the Director of the former CDC repeal any regulations that were amended, adopted, or repealed from July 31, 2001, through July 27, 2005, in the California Code of Regulations (CCR), Title 15, Divisions 2 and 3. The petitioner states that the grounds for the demand are that the Wardens of the California State Prison, Los Angeles County (CSP-LAC) failed or refused to substantially comply with the provisions of GC Section 11340 et seq., and pursuant to GC Sections 11346.2 and 11346.4, failed to post any and all Notice of Change to the Director's Rules (NCDR) in all areas accessible to inmates and the public, and failed to do so within forty-five days of a scheduled hearing.

DEPARTMENT DECISION

The Secretary of the CDCR denies the petitioner's demand to repeal any CCR, Title 15, Division 3

regulations that were amended, adopted, or repealed from July 31, 2001, through July 27, 2005. In addition, because the Director of the former CDC did not have any legal authority to amend, adopt or repeal regulations for the former Board of Prison Terms, the petitioner's demand for repeal of any Division 2 regulations amended, adopted, or repealed during the same time period, is also denied.

The CDCR contends that the petitioner's allegations and demands are unfounded and that the former CDC complied with all requirements of GC Section 11346 et seq. in the adoption, amendment, or repeal of its regulations which were reviewed and approved through the Office of Administrative Law (OAL). Also, regarding the petitioner's claim that the Wardens of CSP-LAC did not comply with the provisions of GC Section 11340 et seq., the Department cannot formulate any meaningful response due to the unclear, non-specific nature of the allegation.

Concerning the process followed for the notification of proposed regulations in Title 15, Division 3, the former CDC, and more currently, the CDCR have complied with all notification requirements. Every Notice, past and present that have been submitted by the Department to OAL, has had to meet all required criteria before being approved and published in the California Regulatory Notice Register. In addition to publication in the Notice Register, approximately 7,000 copies of an NCDR, which includes the Notice, are printed and mailed to all concerned stakeholders, each facility that houses adult inmates, and individuals (including inmates) who have requested to be added to the mailing list. It should be noted that after July 1, 2005, NCDR's are now published and distributed as a Notice of Change to Regulations (NCR). Upon receipt of each NCDR/NCR, each adult facility and field office have been directed, and are required, to immediately post them at locations that are accessible to inmates, parolees, and employees. In addition, each proposed regulation is posted on the Department's internet website and is available to the general public for review.

Regarding the notification process followed by the institution in question, CSP-LAC reports that upon receipt of each NCDR/NCR, the Public Information Officer distributes the approximate 60 copies to the various areas within the institution for posting. These areas include each facility, each housing unit within that facility, minimum support facilities, Administration Segregation Unit, program offices, Visitor Processing Building, Administration Bulletin Board, Men's Advisory Council, Health Care Manager, Central Health Infirmary Compliance Review Coordinator, Appeals Coordinator, Litigation Coordinator, and each Law Library. Maintained in each Law Library are notebooks containing not only the most

current NCDR/NCR but also previous copies. Inmates have access to these notebooks. In addition to the notifications that are provided for posting, approximately every 12 months each inmate housed in an adult facility is provided with a new copy of the CCR, Title 15, Division 3, which include all regulatory text updates for the previous year ending on December 31. For example, CSP-LAC was recently shipped 6,305 copies of the most recent printing of the CCR, Title 15, Division 3 which includes all approved updates through December 31, 2004.

Based on the information provided, the fact that few, if any, other complaints have ever come forward from other adult inmates concerning the availability of notifications, and the fact the former CDC and current CDCR have received many written comments from the adult inmate population concerning both past and present regulations, it is the Department's contention that it has made every reasonable effort in the notification of the adult inmate population as a whole, and for those inmates who want it, have reasonable access to notifications within the time allotted comment periods. Even if one inmate may have unintentionally not been able to review past notifications, they do have access to a copy of the Title 15, Division 3, for review with the right and ability at any time to petition the Department to request the amendment, adoption, or repeal of any specific regulation or regulatory text. Petitioner's demands for repeal are denied.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD

Portable Equipment Registration Program

The Air Resources Board is amending subsections 2453(g)(7) and 2455(c). Cross-references contained within the aforementioned subsections were corrected due to renumbering taking place in File No. 05-0621-04SR.

Title 13

California Code of Regulations

AMEND: 2453, 2455

Filed 10/27/05

Effective 10/27/05

Agency Contact: George Poppic (916) 322-3940

CALIFORNIA EDUCATIONAL FACILITIES

AUTHORITY

CEFA Academic Assistance Program

This rulemaking action defines terms and adopts standards, an application form, instructions and procedures for the administration of the Academic Assistance Program.

Title 4

California Code of Regulations

ADOPT: 9001, 9005, 9006, 9007, 9025, 9027, 9050, 9051, 9052, 9053, 9054, 9055, 9056, 9057, 9058, 9059, 9060, 9061, 9062, 9063, 9064, 9065, 9066, 9067, 9068, 9069, 9070 AMEND: 9020, 9030, 9031, 9032, 9041, 9043

Filed 10/27/05

Effective 10/27/05

Agency Contact: Barry Scarff (916) 654-5711

CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY

Childrens Hospital Program

This Certificate of Compliance filing makes permanent the previously adopted emergency regulations establishing the Children's Hospital Program authorized by Proposition 61. The prior emergency filings include OAL file numbers 05-0201-03E and 05-0519-06EE.

Title 4

California Code of Regulations

ADOPT: 7030, 7031, 7032, 7033, 7034, 7035, 7036, 7037, 7038, 7039, 7040, 7041, 7042, 7043, 7044, 7045, 7046, 7047, 7048, 7049, 7050 AMEND: 7047, 7048 REPEAL: 7049

Filed 10/27/05

Effective 10/27/05

Agency Contact: Mary Bates (916) 653-3423

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

Low Income Housing Tax Credit

This emergency action re-adopted the emergency regulations that implement the federal and state low income housing tax credit regulations that were first adopted in February, 2005.

Title 4

California Code of Regulations

ADOPT: 10300, 10302, 10310, 10315, 10317, 10320, 10322, 10325, 10326, 10327, 10335, 10337

Filed 11/01/05
 Effective 09/28/05
 Agency Contact: Ed Johnson (916) 654-5882

DEPARTMENT OF CONSERVATION
Convenience Zone Exemptions and Handling Fees

This regulatory action amends the regulation to allow a certified recycling center to be eligible for handling fees beginning the first whole month that the recycler is operational in a convenience zone regardless of the status of the zone.

Title 14
 California Code of Regulations
 AMEND: 2516
 Filed 10/26/05
 Effective 11/25/05
 Agency Contact:
 Eloisa Hernandez (916) 327-2757

DEPARTMENT OF CORRECTIONS AND REHABILITATION
Clothed Body Searches of Inmates

This regulatory action is to amend section 3287 of Title 15 in order to address the negative impact of cross-gender bodily contact inherent in clothed body searches of female inmates. It prohibits such searches except in specified emergency situations.

Title 15
 California Code of Regulations
 AMEND: 3287
 Filed 11/01/05
 Effective 11/01/05
 Agency Contact:
 Ann Cunningham (916) 322-9702

FISH AND GAME COMMISSION
Computer Assisted Remote Hunting/Fishing

This regulatory action makes it unlawful to (1) take or assist in the taking of any bird, mammal, or fish in or from the state by computer-assisted remote hunting or fishing or (2) establish or operate a computer-assisted remote hunting or fishing site for the purpose of taking any bird, mammal, or fish from or within the state.

Title 14
 California Code of Regulations
 ADOPT: 2.45, 251.9
 Filed 11/01/05
 Effective 12/01/05
 Agency Contact: Jon Snellstrom (916) 653-4899

FISH AND GAME COMMISSION
Spot Prawn Trap Construction

This regulatory action amends the regulation so that it no longer requires the construction of spot prawn traps to be made only with plastic or wire mesh.

Title 14
 California Code of Regulations
 AMEND: 180.1
 Filed 10/31/05
 Effective 11/30/05
 Agency Contact: Sherrie Koell (916) 653-4899

FISH AND GAME COMMISSION
Marine Protected Areas

This action makes revisions to the regulation governing marine protected areas including the redesignation of six marine parks as marine conservation areas in order to permit the commercial take of spiny lobster.

Title 14
 California Code of Regulations
 AMEND: 632
 Filed 11/02/05
 Effective 11/02/05
 Agency Contact: Sherrie Koell (916) 653-4899

STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998—COS Amendments

This regulatory action is to implement and make specific amendments to the Leroy F. Greene School Facilities Act regarding Critically Overcrowded Schools (COS) as a result of AB 2950, Chapter 898, Statutes of 2004. These amendments apply to COS projects that are funded out of the Kindergarten-University Public Education Facilities Bond Act of 2002 (Prop. 47) and provide alternate ways for a school district to justify eligibility, under certain circumstances, when converting from a Preliminary Apportionment to a Final Apportionment under the COS Facilities Program.

Title 2
 California Code of Regulations
 AMEND: 1859.2, 1859.51, 1859.104.3, 1859.147, 1859.202, 1866, Form SAB 50-01
 Filed 10/27/05
 Effective 10/27/05
 Agency Contact: Robert Young (916) 445-0083

STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998 & Deferred Maint. Program

This regulatory action is to implement the School Facilities Needs Assessment Grant Program and the Emergency Repair Program that provide funding to LEAs to identify and repair conditions which threaten the health and safety of pupils and staff on California school sites. In addition, there is a statutory requirement that beginning with the 2005–2006 fiscal year, SFP and DMP funds cannot be allocated to any school district unless they have established a facilities

inspection system to ensure that each of its schools is maintained in such a manner that it is clean, safe and functional.

Title 2

California Code of Regulations

AMEND: 1859.2, 1859.81, 1866

Filed 10/31/05

Effective 10/31/05

Agency Contact: Robert Young (916) 445-0083

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN JUNE 8, 2005
TO NOVEMBER 2, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

10/31/05 AMEND: 1859.2, 1859.81, 1866

10/27/05 AMEND: 1859.2, 1859.51, 1859.104.3, 1859.147, 1859.202, 1866, Form SAB 50-01

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10/18/05 ADOPT: 18732.5

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10/11/05 AMEND: 18401, 18427.1, 18700, 18705, 18707.9, 18730, 18750

10/06/05 ADOPT: 18735.5

09/23/05 ADOPT: 2280, 2281, 2282, 2283, 2284

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09/13/05 AMEND: 18730

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09/06/05 ADOPT: 1183.12, 1183.13, 1183.14
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08/29/05 AMEND: Div. 8, Ch. 6, Sec. 27000

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07/20/05 ADOPT: 18530.7

07/20/05 AMEND: 18570

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06/24/05 AMEND: 599.502, 599.506

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06/27/05 ADOPT: 3591.18

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 08/16/05 ADOPT: 1207.5 AMEND: 1200, 1203, 1204.5, 1206, 1207, 1209, 1210, 1211, 1211.5, 1215, 1215.5, 1216, 1217, 1225
 08/01/05 ADOPT: 15140, 15141
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06/10/05 ADOPT: 9785.4, 9805.1 AMEND: 9725, 9726, 9727, 9785, 9785.2, 9785.3, 9805, 10150, 10152, 10156, 10158, 10160, 10161, 10163, 10165.5 REPEAL: 10151, 10154

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 08/24/05 AMEND: 551.2, 551.15
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 08/11/05 AMEND: 423.00
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 11/01/05 ADOPT: 2.45, 251.9
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 10/18/05 ADOPT: 17939.1, 17939.2, 17939.3, 17939.4, 17939.5 AMEND: 17930, 17931, 17932, 17933, 17934, 17934.1, 17934.3, 17934.5, 17935, 17935.1, 17935.2, 17935.3, 17935.4, 17935.5, 17935.55, 17935.6, 17936
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 10/12/05 ADOPT: 18459.1.2 AMEND: 18449, 18450, 18451, 18453.2, 18456, 18456.2.1, 18459, 18459.1, 18459.2.1, 18459.3, 18460.1, 18460.1.1, 18460.2, 18460.2.1, 18461, 19462, 18463, 18464, 18466
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